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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~312.~~ 47

THE AMERICAN COTTON-TIE COMPANY (LIMITED), JAMES J. McCOMB, ADMINISTRATOR OF MARY F. McCOMB, DECEASED, ET AL., APPELLANTS,

vs.

SIMEON W. SIMMONS, C. W. SIMMONS, AND W. W. SIMMONS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

FILED OCTOBER 10, 1879.

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1 At a circuit court of the United States for the first circuit and district of Rhode Island, begun and holden at Providence, within and for said district on the fifteenth day of June, A. D. 1878.

Present, Hon. Nathan Clifford, associate justice U. S. Supreme Court; Hon. John P. Knowles, district judge.

In the record of proceedings of said court among others is the following, to wit:

2 *Complaint.—Filed November 4th*, 1876.

Circuit court of the U. S., district of Rhode Island.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, James J. McComb, administrator of the estate of Mary F. McComb and James J. McComb, Charles G. Johnsen, and Emerson Foote.
vs.
SIMEON W. SIMMONS, C. W. SIMMONS, AND W. W. Simmons.
} In equity.

To the honorable the judge of the circuit court of the United States for the district of Rhode Island:

The American Cotton-tie Company, Limited, a joint stock company duly and legally organized under the laws of the United Kingdom of Great Britain and Ireland, and
3 having its principal places of business in Liverpool, England, and in New Orleans, in the State of Louisiana; James J. McComb, a citizen of the United States, and at present residing in Liverpool, England, administrator of the estate of Mary F. McComb, deceased, late of Liverpool; and the said James J. McComb, Charles G. Johnsen, a citizen of the State of Louisiana, and residing in New Orleans in said State, and Emerson Foote, a citizen of the State of New York, and residing in the city of New York in said State, each in his own behalf, and as a copartner in the firm of the American Cotton-tie Company, a firm having its principal place of business in Liverpool, England, and in New Orleans, in the State of Louisiana, bring this their bill of complaint against Simeon W. Simmons, C. W. Simmons, and W. W. Simmons, transacting business at Providence, in the State of Rhode Island, under the name of the Providence Cotton-tie Company, defendants.

And thereupon your orators complain and say:

That prior to the 2d day of March, A. D. 1858, one Frederic Cook was the original and first inventor of a new and useful improvement in metallic ties for cotton-bales, which invention is fully described in the letters patent hereinafter mentioned, and which had not been known or used before the invention or discovery thereof by the said Frederic Cook, and which, at the time of his application for a patent, as hereinafter mentioned, had not been in public use or on sale with his consent or allowance.

And your orators further show unto your honors, that

Frederic Cook, being as aforesaid the first inventor and discoverer of said improvement, and being also a citizen of the United States, did, on the 2d day of March, 1858, upon due application therefor, obtain letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, and numbered 19490, whereby there was granted and secured to the said Cook, his heirs, administrators, or assigns, or intended so to be, for the term of fourteen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement as set forth in said letters patent, which are of record in the Patent Office of the United States, and which, or a duly certified copy of which, your orators are ready here in court to produce.

Grant of Cook Patent, March 2, 1858.

4

And your orators further show unto your honors, that on the 31st day of January, 1872, the said Frederic Cook filed in the said Patent Office his disclaimer to so much of the invention set forth in the said letters patent as was embraced in the first claim thereof, which was in the following words, to wit:

Disclaimer in Cook patent.

"What I claim as my invention and desire to secure by letters patent is:

"The friction clasp or buckle for attaching the ends of iron ties or hoops for fastening cotton-bales and other packages so that the ties are prevented slipping by the friction against a certain portion of the buckle."

Which disclaimer was duly filed and recorded according to law, and became a part of the specification of the patent to the extent of the interest possessed by the said Frederic Cook and those claiming under him after the date of record of the same, as by said disclaimer or a duly certified copy thereof, ready here in court to be produced, will appear.

And your orators further show unto your honors that during the original term of said letters patent an action at law was brought in the circuit court of the United States for the district of Louisiana, by Mary F. McComb and James J. McComb, against one George Brodie, to recover damages for the alleged infringement of said letters patent, which cause came on to be tried at the November term, 1871, of said court, to wit, in March, 1872; that much testimony was introduced on both sides, and that the defendant denied the patentability of the invention described in the third claim, and the scope thereof as claimed by the plaintiffs, and the infringement thereof by the use by him of a square link having one opening or mortice with a slot cut through one bar of clasp leading into said mortice for the purpose of inserting the hoop in a bent condition sidewise instead of endwise. Whereupon, after a trial of four days, the jury rendered a verdict for the plaintiffs.

Adjudications under Cook patent. Brodie suit.

5

Equity suits in Louisiana.

And your orators further show unto your honors that afterwards, to wit, in March, 1872, bills in equity were filed by the said Frederic Cook and your orator James J. McComb, in the circuit court of the United States for the district of Louisiana, against John S. Wallis, William Chambers, and others—among them Andrew, William, and Hugh Stewart, and Andrew Gwynne—who were making and selling metallic ties for cotton-bales, known as the "Wallis," "Alligator," "Dunn," "Eureka," and "Gooch" ties, praying for an injunction and account; that motions were made in all of said cases for provisional injunctions; that the defendants appeared by counsel and resisted said motions, and filed numerous affidavits and exhibits, alleging among other things that the said Frederic Cook was not the original and first inventor of the improvement specified in the third claim of invention in said letters patent, but that said improvement was to be found in an open link for trace-chains, known and used long prior to the invention of said Cook, and in a buckle patented to George Hall, in England, in 1801, and in one described in a provisional specification filed by one Frederick J. Pilliner, in England, in 1856, and that the defendants had received letters patent for the ties made and sold by them, and that said ties did not infringe the letters patent granted to said Cook. And after hearing the arguments of counsel, and upon full
6 consideration, the court found all the issues in favor of the complainants, and granted peremptory injunctions against all of the said defendants.

McComb vs. Ira Beard. New York.

And your orators further show unto your honors that on or about the 23d day of October, 1871, a bill of complaint was filed in the circuit court of the United States for the southern district of New York, by Mary F. McComb, the then owner, by mesne assignment, of said letters patent granted to Frederic Cook as aforesaid, against one Ira Beard, alleging among other things that the said Ira Beard had infringed and was infringing upon said letters patent, by selling and exposing for sale metallic ties for cotton-bales made according to and embodying the invention described and claimed therein, and praying for an injunction and account. And the said defendant made answer thereto, denying among other things that said Frederic Cook was the first and original inventor of the improvements in ties for cotton-bales, described in letters patent No. 19490 so as aforesaid granted to him, averring that long prior to his alleged invention thereof the same was described in the letters patent granted in Great Britain to George Hall, dated November 28, 1801, No. 2561, for "elastic fastenings for shoes;" and the said defendant further denied that he had made, used, or sold any ties for cotton-bales substantially like the ties described and claimed in the said letters patent or any equivalent thereof.

And the said cause came on to a final hearing at the October term of said court, to wit, in December, 1872, upon the proof of the respective parties, among which were the affidavits, proofs, and documents offered in evidence, pro and con, at a hearing in New Orleans, before Mr. Justice

Bradley and Judge Woods, upon a motion for the dissolution of an injunction granted in the suit hereinbefore mentioned of Frederic Cook and James J. McComb against Andrew, William, and Hugh Stewart, and Andrew
7 Gwynne, restraining the sales of ties of cotton-bales known as "Eureka ties;" and said cause was fully and elaborately argued by counsel for the respective parties, and was held under advisement by the said court until January 9, 1873, when the judgment of the court was pronounced. And the said court decided among other things that the said letters patent so as aforesaid granted to Frederic Cook were valid in law; that prior to March 2, 1858, the said Frederic Cook was the true, original, and first inventor of a certain new and useful improvement, to wit, "an improvement in metallic ties for cotton-bales;" that letters patent of the United States were duly issued therefor to the said Cook, bearing date March 2, 1858, and numbered 19490; that the said Ira Beard had infringed so much of said letters patent as is set forth in and claimed in the third claim of invention, by having sold metallic ties for cotton-bales having and containing a slot cut through one bar of clasp, which enables the end of the tie or hoop to be slipped sidewise underneath the bar in clasp, so as to effect the fastening with greater rapidity than by passing the end of the tie through endwise, said tie so sold by said defendant being similar to the one described in letters patent for an improvement in cotton-bale ties granted to George N. Beard, December 27, 1870; and that said complainant was entitled to the costs of said suit, and to an account of the profits derived by the defendant from said infringement, as well as the damages sustained by the complainant thereby.

McComb vs. G. N. Beard. W. D. of Tenn.

And your orators further show unto your honors that in the circuit court of the United States for the western district of Tennessee bills of complaint were filed by Mary F. McComb and your orator James J. McComb against George N. Beard, and by your orator James J. McComb, individually, against said George N. Beard; and that said defendant in said suits made like answer to each of said bills of complaint, admitting the sale of metallic ties for cotton-bales of the kind known to the trade
8 as the "Eureka tie," but denying that the same infringed upon letters patent granted as aforesaid to said Cook, and denying also that the said Frederic Cook was the original and first inventor of the improvement in said letters patent described and claimed, but averring, among other things, that prior to his invention thereof the same was described and patented in the English letters patent aforesaid, granted to George Hall, and in certain English letters patent granted to one T. B. Daft, February 1, 1847, and numbered 11554. And afterwards, at the May term of said court, in the year 1873, said cause was brought to a final hearing before his honor Judge Emmons, and was argued by counsel for the respective parties, and thereupon, on consideration thereof, the said court adjudged and

decreed that the said letters patent granted to Frederic Cook as aforesaid were valid in law; that the said Frederic Cook was the true, original, and first inventor of the improvements therein described and claimed; that the same were duly assigned to said complainants; and that the said defendant George N. Beard had infringed said letters patent by having made and sold the said "Eureka tie."

Extension of Cook patent.

And your orators further show unto your honors that on or about the 17th day of February, 1872, the said Frederic Cook having made application for the extension of the term of the said letters patent, granted him as aforesaid on the 2d day of March, 1858, for a further period of seven years from and after the 2d day of March, 1872, and having fully and in all respects complied with the various requirements of law in such case made and provided, and after full examination by the Commissioner of Patents, the extension thereof was duly granted, and the said letters patent were, by the certificate of said Commissioner, declared to have the same effect as if originally granted for twenty-one years; as by the production of said certificate of extension, or a duly certified copy thereof, ready here in court to be produced, will fully appear.

Assignment to J. J. McComb.

9 And your orators further show your honors that afterwards, to wit, on or about the 22d day of March, 1872, the said Frederic Cook, by an assignment in writing of that date, sold, assigned, and transferred unto your orator James J. McComb all his, said Cook's, right, title, and interest in and to said letters patent and invention, which said assignment was duly recorded in the Patent Office of the United States, as by said assignment, or a duly certified copy thereof, ready in court to be produced, will fully and at large appear; and that, by virtue of the premises, your said orator James J. McComb became possessed of all the rights and privileges granted and secured, or intended to be granted and secured, in and by the said letters patent.

Grant of Brodie patent, March 22 1859.

And your orators show unto your honors that, prior to the 22d day of March, 1859, one George Brodie was the original and first inventor of certain new and useful improvements in metallic bands for baling, fully set forth and described in the letters patent hereinafter mentioned, and which had not been known or used before the invention or discovery thereof by the said Brodie, and which at the time of his application for a patent, as hereinafter mentioned, had not been in public use or on sale with his consent or allowance.

And your orators further show unto your honors that said George Brodie, being so as aforesaid the first inventor and discoverer of said improvements, and being also a citizen of the United States, did, on the said 22d day of March, 1859, upon due application therefor, obtain letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, whereby there was granted and secured to the said Brodie, his heirs, admin-

istrators, or assigns, or intended so to be, for the term of fourteen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvements, as set forth in said letters patent, which are of record in the Patent Office of the United States, and which, or a duly certified copy thereof, your orators are ready here in court to produce.

Reissue of Brodie patent, April 27, 1869.

And your orators further show unto your honors that the said George Brodie having for good and lawful cause surrendered said letters patent to the Commissioner of Patents, and having made due application therefor, and having in all things complied with the acts of Congress in such case made and provided, did, on the 27th day of April, A. D. 1869, obtain certain new letters patent for the same invention, being a reissue of said last-named original patent, and numbered 3405, which reissued letters patent were issued in the due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and bearing date the day and year aforesaid, as by the said last-mentioned letters patent, or a duly certified copy thereof, ready here in court to be produced, will appear.

Assignment of Brodie patent to McComb.

And your orators further show unto your honors that afterwards, to wit, on or about the 19th day of March, 1873, the said George Brodie, by an assignment in writing of that date, sold, assigned, and transferred unto your orator, James J. McComb, all his, said Brodie's, right, title, and interest in and to said letters patent and invention, for the full term of said patent, and of any reissue, renewal, and extension thereof, which said assignment was duly recorded in the Patent Office of the United States, as by said assignment, or a duly certified copy thereof, ready in court to be produced, will fully and at large appear; and that, by virtue of the premises, your said orator James J. McComb became possessed of all the rights and privileges
11 granted and secured, or intended to be granted and secured, in and by the said letters patent.

Extension of Brodie patent.

And your orators further show unto your honors that, on or about the 21st of March, 1873, the said George Brodie having made application for the extension of the term of the said last-mentioned letters patent, granted him as aforesaid, for a further period of seven years from and after the 22d day of March, 1873, and having fully and in all respects complied with the various requirements of law in such case made or provided, and after full examination by the Commissioner of Patents, the extension thereof was duly granted, and said letters patent were, by the certificate of said Commissioner, declared to have the same effect as if originally granted for twenty-one years, as by the production of said certificate of extension, or a duly certified copy thereof, ready here in court to be produced, will fully appear; which said extension, by virtue of the assignment last named,

inured to the benefit of your orator, James J. McComb, his heirs or assigns.

Reissue of Brodie patent, March 25, 1873.

And your orators further show unto your honors that afterwards the said George Brodie, having for good and lawful cause and with the consent and approbation of your orator James J. McComb surrendered said last-named letters patent to the Commissioner of Patents, and having made due application therefor, and having in all things complied with the acts of Congress in such case made and provided, certain new letters patent, on the same invention, and numbered 5333, were granted the said James J. McComb, as assignee of the said Brodie, his heirs or assigns, on the 25th day of March, 1873, which reissued letters patent were issued in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and bearing date the day and year aforesaid, as by the said last-mentioned letters pat-
12 ent, or a duly certified copy thereof, ready here in court to be produced, will fully appear.

Assignment of Cook and Brodie patents to A. C. T. Co.

And your orators further show unto your honors that on or about the 21st of March, 1873, your orators James J. McComb, Charles G. Johnsen, and Emerson Foote formed a special copartnership under the name and style of the American Cotton-tie Company for the manufacturing and selling of matallic bale-ties, and that in pursuance of the provisions of the copartnership contract, and for and in consideration of the mutual covenants and agreements therein contained, your orator James J. McComb did, among other things, on or about the date last named, sell, assign, and set over unto the said firm all his right, title, and interest in and to the letters patent granted to the said Frederic Cook and extended as aforesaid, and in and to the letters patent granted to the said George Brodie and reissued and extended as aforesaid, and in and to the respective inventions covered thereby; and that by virtue of the premises your orators the said James J. McComb, Charles G. Johnsen, and Emerson Foote, members of the firm of the American Cotton-tie Company aforesaid, became possessed of all the rights and privileges granted and secured or intended to be granted and secured by the said several letters patent.

Grant of McComb patent.

And your orators further show unto your honors that prior to the 29th day of January, 1861, your orator James J. McComb was the original and first inventor of a certain new and useful improvement in iron ties for cotton-bales, fully set forth and described in the letters patent hereinafter mentioned, and which had not been known or used before the invention or discovery thereof by the said McComb.

And your orators further show unto your honors that the said James J. McComb, being so as aforesaid the first inventor and discoverer of said improvement, and being also a citizen of the United States, did, on the 29th day of January, 1861, upon due application therefor, obtain
13 letters patent of the United States for said inven-

tion in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last named and numbered 31252, whereby there was granted and secured to the said James J. McComb, his heirs, administrators or assigns, or intended so to be, for the term of fourteen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement as set forth in said letters patent, which are of record in the Patent Office of the United States, and which, or a duly certified copy of which, your orators are ready here in court to produce.

Assignment of McComb patent to Mary F. McComb.

And your orators further show that in the year 1861, by mesne assignment in writing, one Mary F. McComb became possessed of the entire right, title, and interest in and to the last-named letters patent and invention, for the full term of said patent, including any reissue, renewal, and extension thereof; that the said Mary F. McComb died intestate on or about the ninth day of December, 1874; and that your orator James J. McComb was thereafter duly appointed administrator of the estate of the said Mary F. McComb, deceased.

Extension of McComb patent.

And your orators further show that the term of the last-named letters patent, upon due application made, and after due proceedings had, was extended by the Commissioner of Patents, in due conformity to law, for the further period of seven years from and after the 29th day of January, 1875; and the said letters patent were, by the certificate of the said Commissioner, declared to have the same effect as if originally granted for twenty-one years; as by reference to the original certificate of extension, or a duly certified copy thereof, ready here in court to be produced, will fully appear.

Organization of the Am. Cotton Tie Co., Limited.

14 And your orators further show that the corporation complainant, the American Cotton-tie Company, Limited, was duly and legally organized on or about the first day of January, 1876, by the proper registration of a memorandum of association, and of articles of association, and the performance of all other necessary acts required by the laws of the United Kingdom of Great Britain and Ireland, in such case made and provided; that the said corporation was organized with the consent and approval and by the procurement of your orators James J. McComb, Charles G. Johnsen, and Emerson Foote, members of the firm of the aforesaid American Cotton-tie Company, and for the express purpose, among other things, of buying from the said firm their good-will in the business of making and selling metallic bale-ties and all the patents and patent rights and privileges pertaining to said business, then owned by the said firm, and also of buying the aforesaid letters patent No. 31252, granted to your orator James J. McComb, January 29, 1861, and at the time of the organization of the corporation complainant, as aforesaid,

held by the said McComb as administrator of the estate of Mary F. McComb, deceased; that upon the organization of the said corporation and in pursuance of the purposes of its creation, the several letters patent hereinbefore named were, for good and valuable considerations, sold, assigned, set over and transferred to the said corporation, together with all reissues, renewals, and extensions of the same, and all claims and demands whatsoever, for damages and profits arising from the prior use, without license, of the inventions covered by said patents; and that, by virtue of the premises, your orator The American Cotton-tie Company, Limited, became, and now is, possessed of the sole and exclusive right, title, and interest in and to the several letters patent, and of all the rights and privileges granted and secured, or intended to be granted and secured thereby.

Assignment of patents to A. C. T. Co., Limited.

And your orators further show that the inventions covered by the several letters patent hereinbefore
15 named, and on which this suit is brought, are of very great value and utility, and have been very extensively introduced into use, to the great benefit and advantage of the public; in fact, your orators fully believe, and therefore allege the fact to be, that it is owing almost wholly to the merits of the said inventions that the metallic tie for baling cotton has become popularized, so that at the present time metallic ties have wholly superseded the use of rope for this purpose.

Value and public use of the patented inventions.

And your orators further show unto your honors, that since they respectively became the owners of the said letters patent as aforesaid, and have had the right to use the inventions covered thereby, they have invested large sums of money, and been to great trouble in and about the said inventions, in making the same profitable to themselves and useful to the public; that they have entered largely into the business of making and selling iron cotton-ties, embodying said inventions; that they have always used for this purpose a superior quality of iron, and have at all times been ready to supply the market therewith at reasonable rates.

Diligence of complainants in working the inventions.

And your orators further show that the public have generally acknowledged and acquiesced in the rights of your orators as secured by the several patents aforesaid; and they further say that they verily believe that the persons to whom the said several letters patent were originally granted, and who are named therein as the inventors, were the original and first inventors or discoverers of the respective inventions and improvements covered thereby, and that the said several letters patent upon which this suit is brought are in all respects good and valid patents.

Acquiescence of the public.

Yet the said defendants, well knowing the premises, and the rights secured to your orators as aforesaid, but contriving to injure your orators and to deprive them of the benefits and advantages which might and otherwise would accrue unto them from said invention, after the issuing
16 of the said several letters patent and after the assignment of the same to your orators as aforesaid, and before the commencement of this suit, and particularly

Infringement by defendants.

during the years 1875 and 1876, did, as your orators are informed and believe, without the license or allowance, and against the will of your orators and in violation of their rights, and in infringement of the aforesaid letters patent, within this district and elsewhere, unlawfully and wrongfully, and in defiance of the rights of your orators, make, construct, use, and vend to others to be used, the said inventions, and did make, construct, use, and vend to others to be used, metallic ties for cotton-bales, each of which ties was made according to, and employed and contained the said several patented inventions, and that the said defendants still continue so to do, and are openly threatening to make the aforesaid metallic ties, and to put the same upon the market in large quantities, and to sell the same.

All in defiance of the rights acquired by and secured to your orators as aforesaid, and to their great and irreparable loss and injury, and by which they have been and still are being deprived of great gains and profits which they might and otherwise would have obtained, but which have been received and enjoyed, and are being received and enjoyed, by the said defendants, by and through their aforesaid unlawful acts and doings.

And your orators further show unto your honors that said defendants have sold large quantities of said metallic ties for cotton-bales, and now have a large quantity on hand, which they are offering for sale, and that they have made and realized large profits and advantages from such sales heretofore made, but to what extent, and how much exactly, your orators say they do not know, and pray a discovery thereof. And your orators aver that the use of the said inventions by said defendants, and their preparation for and avowed determination to continue the same, in disregard and defiance of the rights of your orators, have
17 the effect to and do encourage and induce others to venture to infringe said patents in disregard of your orators' rights.

And your orators show unto your honors that they have caused notice to be given to said defendants of said infringements, and of the rights of your orators in the premises, and requested them to desist and refrain therefrom; but they have disregarded said notice, and refused to desist from said infringements, and still continue to make and sell metallic ties for cotton-bales made in accordance with the inventions secured to your orators as aforesaid.

Notice to defendants.

And forasmuch as your orators can have no adequate relief except in this court, to the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several corporal oaths, according to their best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises, and to all the several matters hereinbefore stated and charged, as fully and particularly as if severally and separately interrogated as to each and every of said matters, and may be compelled to account for and pay to your orators the profits by them acquired, and the damages suffered by your orators from the aforesaid unlawful acts, together with such increase upon the

actual damages, according to the provision of law relating thereto, as may seem to this honorable court meet and just; and that the said defendants, their servants, agents, attorneys, and workmen, and each and every of them, may be restrained and enjoined, preliminarily, provisionally, and perpetually, by the order and injunction of this honorable court, from directly or indirectly making, constructing, using, vending, delivering, working, or putting into practice, operation or use, or in any wise counterfeiting or imitating the said inventions, or any part thereof, or making, using or selling metallic ties for cotton-bales made in accordance therewith; and that the ties now in their possession
18 may be destroyed, or be delivered up to your orators for that purpose; and that the said defendants may be decreed to pay the costs of this suit; and that your orators may have such further relief or such other relief as to this honorable court shall seem meet, and as shall be agreeable to equity:

May it please your honors to grant unto your orators the writ of injunction, as well preliminary and provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendants, Simeon W. Simmons, C. W. Simmons, and W. W. Simmons, and their servants, agents, attorneys, and workmen, and each and every of them, as is hereinbefore in that behalf prayed; and may it please your honors to grant unto your orators the writ of subpœna, issued out of and under the seal of this honorable court, directed to the said defendants Simeon W. Simmons, C. W. Simmons and W. W. Simmons, commanding them by a certain day, and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises, and to stand to and abide such order and decree as may be made against them.

And your orators will ever pray, &c.

(Signed) SAM'L A. DUNCAN,
Solicitor.

(Signed) SAM'L A. DUNCAN,
GEO. HARDING,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 19th day of October, 1876, before me personally appeared Frederic Cook, the attorney in fact of the above-named complainants, who, being by me duly sworn, deposes and says that he has read
19 the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) FREDERIC COOK,
Attorney in fact for Complainants.

Subscribed and sworn to before me this 19th day of October, 1876.
[L. S.] W. L. BRENNEM,
Notary Public, N. Y. Co.

20 *Answer.—Filed January 1st, 1877.*

Circuit court of the United States, district of Rhode Island.

THE AMERICAN COTTON-TIE CO., LIMITED, James J. McComb, administrator of the estate of Mary F. McComb, Charles G. Johnsen, and Emerson Foote,
vs.
SIMEON W. SIMMONS, C. W. SIMMONS, AND W. W. Simmons.
} In equity.

To the honorable the judge of the circuit court of the United States for the district of Rhode Island:

The joint and several answer of Simeon W. Simmons, C. W. Simmons, and W. W. Simmons to the bill of complaint of The American Cotton-tie Co., Limited, James J. McComb, administrator of the estate of Mary F. McComb, Charles G. Johnsen, and Emerson Foote.

And the defendants, saving and reserving to themselves all right of exception as to all the matter contained in said bill, for answer thereto, or to so much thereof as they are advised to be material to be answered unto, say:

These defendants are informed and believe that letters patent of the United States were granted to Frederic Cook for an improvement in metallic ties for cotton-bales, dated March 2d, 1858, and they are therefore informed and believe that the disclaimer set forth in said bill was filed in the Patent Office as in said bill stated. But these defend-
21 ants have no knowledge, save as informed by the bill of complaint, as to the several adjudications upon the patent of said Cook, which are set forth in said bill, and leave the complainants to prove the same as they may be advised.

And these defendants are informed and believe that the said Cook patent was extended as set forth in said bill, but whether said patent was on the 22d day of March, 1872, assigned to James J. McComb these defendants are ignorant.

And these defendants are informed and believe that letters patent were on the 22d day of March, 1859, granted to George Brodie for an improvement in metallic bands for baling, as set forth in said bill.

They are also informed and believe that said letters patent were surrendered and reissued on the 27th day of April, 1869, as in said bill stated, but whether said letters patent were on the 19th day of March, 1873, assigned to said James J. McComb these defendants are ignorant; neither do they know, except as informed by said bill, whether said letters patent were again surrendered or reissued on the 22d of March, 1873, and these defendants are ignorant whether James J. McComb, Charles G. Johnsen, and Emerson Foote formed a special copartnership under the name of the American Cotton-tie Co. on the 21st of March, 1873, and they are ignorant whether the said McComb did sell to said firm the said letters patent granted to the said Cook and the letters patent granted to the said Brodie, as alleged in said bill, but leave the complainants to prove the same as they may be advised.

And these defendants are informed and believe that letters patent of the United States were on the 29th of January, 1861, granted to James J. McComb for the improvement in iron ties for cotton-bales, but they are ignorant whether an assignment of the same was made to Mary F.

McComb as in said bill alleged; neither are they informed, save
22 by said bill, whether said Mary F. McComb died intestate, or whether the said James J. McComb was appointed administrator upon her estate.

And these defendants do not know and are not informed, save by said bill, whether on the first day of January, 1876, by the proper registration of a memorandum of association and of articles of association the corporation under the name of The American Cotton-tie Company, Limited, was organized under the laws of the United Kingdon of Great Britain and Ireland; neither do they know that the corporation was organized by the consent and approval of James J. McComb, Charles G. Johnsen, and Emerson Foote; neither do they know whether the several letters patent in said bill mentioned were assigned and conveyed to the said corporation of The American Cotton-tie Company, Limited, nor whether the said company is now the owner of said letters patent and possessed of the sole and exclusive right, title, and interest in and to the same, as in said bill alleged, and leave the complainants to prove the same as they may be advised.

And these defendants severally deny that they or any of them have, in violation of the rights of the complainants, and without the license of the said complainants, and in infringement of the aforesaid letters patent, or any of them, within this district or elsewhere, unlawfully and wrongfully made, constructed, used, and vended to others to be used, the said inventions, and deny that they have made, constructed, used, and vended to others to be used, metallic ties for cotton-bales which were made according to and employed and contained the said several patented inventions, as charged in said bill, in violation of any right which the said complainants have in the premises; and the said defendants deny every allegation of infringement upon the rights of said complainants under said letters patent in said bill of complaint contained.

All which matters and things these defendants are ready to aver,
maintain, and prove, as this honorable court shall direct, and
23 they pray that they may be hence dismissed, with reasonable costs and charges, in this behalf most wrongfully sustained.

UNITED STATES OF AMERICA,
District of Rhode Island:

On this day of , 1876, personally appeared the above-named Simeon W. Simmons, C. W. Simmons, and W. W. Simmons, and made oath that the foregoing answer by them subscribed is true, except as to matters stated on information and belief, and as to the same they believe it to be true.

Before me,

24 *Replication.—Filed January* 23, 1877.

Circuit court of the United States for the district of Rhode Island, in the circuit.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, *vs.* S. W. SIMMONS ET AL. } In equity.

The replication of the above-named complainant to the answer of the above-named defendants:

This repliant, saving and reserving to itself, now and at all times

hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of said answer, for replication thereunto says, that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

January 23, 1877.

SAMUEL A. DUNCAN,
Solicitor for Complainants, 19 *Park Place, New York City.*

25 Circuit court of the United States, district of Rhode Island.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, James J. McComb, administrator of the estate of Mary F. McComb and James J. McComb, Charles G. Johnsen, and Emerson Foote,
vs.
SIMEON W. SIMMONS, C. W. SIMMONS, AND W. W. Simmons.
} In equity.

Proofs for final hearing, taken by the agreement of parties, before R. E. Stillwell, examiner:

NEW YORK, *April 17th*, 1877.

Present, S. A. Duncan, for complainants; B. F. Thurston, for defendants.

Counsel for complainants offers in evidence certified copy of letters patent No. 19490, for improvement in metallic ties for cotton bales, granted to Frederic Cook, March 2d, 1858, together with the accompanying disclaimer and certificate of extension, and the same is hereby marked "Complainants' Exhibit, Cook Patent."

Also, certified copy of reissue letters patent, No. 5333, for improvement in cotton-bale ties, granted to James Jennings McComb, as assignee of George Brodie, March 25th, 1873, and the same is hereby marked "Complainants' Exhibit, Brodie Reissue."

Also, certified copy of letters patent No. 31252, for improvement in iron ties for cotton bales, granted to J. J. McComb, January 29th, 1861, together with the certificate of extension, and the same is hereby
26 marked "Complainants' Exhibit, McComb Patent."

Also, certified copy from the records of the Patent Office of assignments relating to the aforesaid Brodie patent, and the same is hereby marked "Complainants' Exhibit, Brodie Assignments."

Also, certified copy from the records of the Patent Office of assignments relating to the aforesaid Cook patent, and the same is hereby marked "Complainants' Exhibit, Cook Assignments."

Also, certified copy from the records of the Patent Office of assignments relating to the aforesaid McComb patent, and the same is hereby marked "Complainants' Exhibit, McComb Assignments."

Also, an exemplified copy of the letters of administration granted to James J. McComb, on the estate of Mary F. McComb, and the same is hereby marked "Complainants' Exhibit, Letters of Administration."

Also, certificate of incorporation of The American Cotton-tie Company, Limited, and the same is hereby marked "Complainants' Exhibit, Certificate of Incorporation."

Also, a certified copy of pleadings, decrees, etc., in the following-named suits, in the United States circuit court for the district of Louisiana, to wit:

Mary Frances McComb against George Brodie and Frederic Cook and James J. McComb against George Brodie.

Same parties against Frederick B. Ernest and Frederick Ernest.

Same parties against John S. Wallis.

Same parties against William Chambers.

Same parties against Andrew Stewart and others, and the same is hereby marked "Complainants' Exhibit, Louisiana Suits of 1872."

Also, an exemplified copy of the pleadings, decree, etc., in the suit of Mary F. McComb against Ira Beard, in the United States circuit court for the southern district of New York, and the same is hereby marked "Complainants' Exhibit, Record Ira Beard Suit."

27 Also, certified copy of the pleadings, decrees, etc., in the following-named suits in the circuit court of the United States in the western district of Tennessee, to wit:

Mary F. McComb and J. J. McComb against George N. Beard, and James J. McComb against George N. Beard, and the same is hereby marked "Complainants' Exhibit, Record Tennessee Suits."

Also, certified copy of the pleadings, injunction proceedings, and decree, in the suit of The American Cotton-tie Company, Limited, et al., against Charles W. Chapman, in the United States circuit court for the district of Louisiana, and the same is hereby marked "Complainants' Exhibit, Record Chapman Suit."

Also, an exemplified copy of the pleadings, injunction proceedings, and decree, in the suit of The American Cotton-tie Company, Limited, and others against Groover, Stubbs & Co., in the United States circuit court for the southern district of Georgia, and the same is hereby marked "Complainants' Exhibit Record Groover, Stubbs & Co. Suit."

Also, certified copy of the pleadings, injunction proceedings, and decree in the suit of The American Cotton-tie Company, Limited, and others against A. C. & B. F. Wyly, in the United States circuit court for the northern district of Georgia, and the same is hereby marked "Complainants' Exhibit, Record Wyly Suit."

JAMES J. MCCOMB, a witness produced on behalf of the complainants, being duly sworn, deposes and says as follows, in answer to interrogatories put by S. A. DUNCAN, Esq.:

Q. 1. Give your name, age, residence, and occupation.

A. James Jennings McComb; age, 48; residence, 579 Fifth avenue, New York; occupation, director of The American Cotton-tie Company, Limited.

28 Q. 2. State whether this company is an incorporated company.

A. It is.

Q. 3. When incorporated and where?

A. Incorporated under the limited liability laws of England, in the latter part of 1875.

(Question and answer objected to, on the ground that the proof is incompetent to establish the fact.)

Q. 4. Is The American Cotton-tie Company, Limited, the owner of the several letters patent, upon which this suit is brought?

A. It is.

Q. 5. State whether this company since its organization has manufactured and sold cotton-ties, and, if so, to what extent, approximately, and what kind of ties?

A. They have, to the extent of about 12,000 tons of the "Arrow tie."

Q. 6. Will you produce samples of the buckles of the "Arrow tie" made by the corporation complainant or its predecessors in business?

A. These are samples of the two forms; two of these buckles with the opening in the lower bar are known as the "No. 2 Arrow tie," and the one with the opening in the side is the "No. 4 Arrow-tie buckle."

(Witness produces three buckles, which complainants' counsel offers in evidence, and the same are hereby marked "Complainants Exhibit, Arrow-tie Buckles.")

Q. 7. Are you acquainted with the defendants in this suit?

A. I am.

Q. 8. Have you had any conversation or correspondence with either of them, as to iron bale ties, made or sold by them, and, if so, please state the substance of such conversation or correspondence?

29 A. Mr. S. W. Simmons called on me at my house on the 22d February. This was the first occasion of our meeting, and he described the object of his visit to be a discussion of the legal controversy pending between The American Cotton-tie Company, Limited, and the firm known as the Providence Cotton-tie Company, of Providence, composed of himself and his two brothers, C. W. & W. W. Simmons. Mr. Simmons at this interview admitted that their firm had been engaged for some years past in the manufacture of so-called second-hand Arrow cotton-ties. Subsequently, on the 1st March, by appointment, Messrs. S. W., C. W., and W. W. Simmons called together at my house, on which occasion we had quite a lengthened interview, in all of which it was freely admitted by those gentlemen that they had been engaged in the manufacture and sale of the so-called second-hand Arrow cotton-ties; that, in the incipiency of the business it had been conducted by one of them at Augusta, Georgia, which led to their entering into the manufacture at Providence, availing themselves of the labor at the State prison; that they had always been able to sell these pieced Arrow ties at within about half a cent of our price for new Arrow ties. My next interview was with Mr. S. W. and Mr. W. W. Simmons at Providence, on which occasion they took me through the State prison and exhibited the work they were then doing in this line. This was on the 15th March, present year.

Q. 9. You saw this work going on?

A. I found a full staff of men engaged in straightening out the hoops, punching, riveting and bundling, and with each of the bundles the Arrow-tie buckles were being attached in the proportion of one buckle to each band; these bundles were subsequently dipped in varnish and were being hauled away from the prison.

Q. 10. Can you produce specimens of the buckles which were being used by the defendants at the time of your visit to their works, as stated?

30 A. I can. I have here three buckles that are exact specimens of the buckles that were attached to the bundles at the time. In further answer, I wish to state that my last interview with either

of these gentlemen was about the 20th March, and with Mr. W. W. Simmons, who called at my house, on which occasion I explained to him that in our former interviews I had understood that they were not then engaged in manufacture, and did not intimate that they had any intention of doing so pending the decision of this litigation; that I was therefore surprised to find them going on with full force, and that, under these circumstances, on full consideration of the subject, and in reference to their overtures for a compromise and settlement of the difficulty, we could see no other course open than to proceed with the litigation.

Q. 11. State briefly what had been the object of these previous conferences between yourself and the defendants, and how they were brought about.

A. The avowed object throughout in those interviews on the part of the Messrs. Simmons was to bring about a compromise of the pending litigation. These interviews were brought about at their own solicitation; my visit to Providence was in obedience to their request.

(Complainants' counsel offers in evidence the three buckles last hereinbefore referred to by the witness, and the same are hereby marked "Complainants' Exhibit Defendants' Arrow-tie Buckles.")

Q. 12. Please examine the buckles marked "Defendants' Arrow-tie Buckles," and state how the band would be manipulated in securing it round a bale of cotton by means of such buckle.

A. In the buckle known as the No. 2, being the one with the slot through the lower bar, the hook can be made on one end of the hoop into which the buckle would be inserted, and on the band being passed around the bale, the free end would be drawn taut and a loop
31 then formed on that end and inserted through the opening on the lower bar of the buckle, which completes the fastening. The manipulation of the other, No. 4 buckle, with the opening at the side, is substantially the same, except that the last loop is passed through the opening on the side to complete the fastening.

Q. 13. In both forms of buckle, then, the loop would be formed in the free end of the band before that end is engaged in the buckle?

A. It would.

Q. 14. And the function of the slot in these three buckles is what?

A. Is to admit the passing of a looped end of the hoop in laterally.

Q. 15. If it were not for the slot in the frame of the buckle, how would that end of the band have to be manipulated in engaging it with the buckle?

A. It would have to be passed in endwise over the bar of the buckle.

Q. 16. And what advantage, if any, is there in the presence of the slot?

A. The advantage is very great, in that it gives much greater facility in making the fastening when the bale is pressed.

Q. 17. In the use of the buckles, how are the ends of the band confined or held in place after they have been engaged with the buckle in the manner already indicated?

A. By the expansive force of the bale on its being released from the press.

Q. 18. And how does that operate to accomplish this result?

A. When the strain of the expanding bale comes upon the bands, the looped ends being inside, they are held firmly in the position by the force exerted against the band and buckle.

Q. 19. How do the two buckles of the defendants, where the slot is

cut through the lower bar, compare in construction and mode of operation with the buckle shown and described in the McComb patent No. 31252?

32 A. The construction and mode of operation are identically the same, with this only difference, that the strip shown in the drawings, from which the buckles were made, is devoid of the rib found on the defendants' buckle, and the slot or opening cut through the lower bar is somewhat greater than in the buckle shown in the drawings of the patent.

Q. 20. Are the defendants, or any of them, licensed by the American Cotton-tie Co., Limited, to use the inventions covered by the patents under which this suit is brought?

A. They are not.

Q. 21. How long have you been connected with the business of making and selling iron bale-ties, and state what your relations to the business have been?

A. Since 1858, my earliest connection with the business was with my brother, David McComb, who invented and patented a tie, the construction and mode of operation of which was by means of short hooks made on the reverse sides of the ends of the hoops, which, being brought together, were held in position by a slide or a sleeve passed over them. This was the earliest cotton-tie ever offered in this country. This tie was found impracticable from its non-adjustable character, the bands having to be prepared to specific lengths to suit the different varieties of bales to which they were to be applied. My endeavors to introduce this tie resulted in the invention by me of the Arrow tie, which met every requirement of the plantation presses and the represses at the ports, and at the outbreak of the war I went to England for the purpose of preparing liberal supplies of this description of tie for use as soon as the blockade was raised, in which business I have been engaged ever since, and up to 1867 solely on my own account. In December of that year I entered into a commercial arrangement with Mr. Charles G. Johnsen, of New Orleans, in respect of a patent owned by him known as the "Swett tie." In 1871 a new arrangement was entered into with Mr. Johnsen, and some other parties associated

33 with him, which, with slight modifications, continued to exist down to the date of the formation of the American Cotton-tie Company, Limited. From 1873 to 1875 the business was conducted under the firm name of the American Cotton-tie Company, the firm consisting of myself, Charles G. Johnsen, and Emerson Foote.

Q. 22. How largely have the several inventions covered by the three patents on which this suit is brought been put into use by yourself and the gentlemen with whom, from time to time, you have been associated in business?

A. Roughly estimated from the beginning at about one hundred thousand tons of Arrow ties. The Arrow tie, as I understand it embodies features of invention covered by each of the three patents under which this suit is brought.

Q. 23. Give, if you can, some estimate of the value of these various inventions to the public, coupling that estimate with the grounds on which it is based.

A. In the earlier attempts to introduce iron ties only solid buckles were used, requiring the end of the band to be passed over the bar of the buckle endwise, and it was not until the introduction of the Arrow tie, with the slot or opening cut through the lower bar thereof to admit of passing the looped end of the hoop in laterally, that the prejudices

of the public, particularly those interested in compressing cotton, were overcome. Directly after the close of the war very strong efforts were made by sundry parties in competition with me in this trade to popularize the solid buckles, but that they found impossible, and successively each of the parties principally so engaged introduced into their solid buckles in various forms, the feature of the open slot. Until they introduced this feature into their buckles they were compelled to accept from one to one and one-half cents per pound less than the current price for the Arrow ties, in order to make sales. For the above reasons I con-
34 sider that the introduction of the open slot with the buckle, in such a way that the loop may be made on the free end of the band before it is engaged with the buckle, has been the main element in effecting the substitution of iron bands for rope in the baling of the cotton crop. Previous to the introduction of iron bands the entire crop was baled with rope, which is an article subject to extreme fluctuations in value. It requires twenty thousand tons of iron bands to bale a crop of four million bales, and through the reduced cost, as compared with rope, a greater security from fire, and diminished bulk, the average saving to the public for the substitution of iron bands for rope cannot be estimated at less than one dollar per bale, which, since the introduction of the Arrow tie, would represent an aggregate saving to the public of upward of thirty millions of dollars.

Q. 34. Explain under what circumstances you became interested in the Cook patent?

A. The first open-slot tie, as such, I ever saw, was produced by one Taylor, from whom I purchased the supposed invention; but on application for a patent on the broad device he produced, it was rejected on reference to the patent of Mr. George Brodie, of 1859. The Taylor buckle thus rejected on Brodie was a simple square frame, with a slot cut through one of the four bars. On investigation I found that Mr. Brodie's claim to the open slot had been rejected on reference to Mr. Frederic Cook's patent of March, 1858. On perfecting the invention of the Arrow tie, I submitted it to my Washington agent, who informed me that it was patentable, but that without the possession of the Cook invention I could not introduce it without infringing his patent. Not being able to find Mr. Cook, I let the application remain in abeyance for some time, but in 1861 put it upon the market; soon after which Mr. Cook gave notice that the same was an infringement of his patent. This led to an interview with him, which resulted in my purchasing his patent.

35 Q. 25. What has been the practice of the American Cotton-tie Company, Limited, and its predecessors in business as to granting licenses under their various patents?

A. They have never granted any licenses to manufacturers, but have always retained the manufacture in their own hands.

Q. What has been the practice of the American Cotton-tie Company, Limited, and its immediate predecessor, the American Cotton-tie Company, as to imposing conditions or limitations upon the use of the buckles belonging to the bands sold by them?

A. They have had printed on the buckle the following clause, "licensed to use once only," and up to the season of 1876 they had printed on the bill-heads or invoices of all agents selling their ties the following clause: "The cotton-ties sold by this invoice are licensed to be used once only as baling ties, and are sold and purchased subject to this restriction." Since which date they have in like manner had printed on the bill-heads or invoices of all their agents the following

clause: "Each bundle of cotton-ties charged in this invoice consists of 30 bands. The buckles accompanying these bands are the property of the American Cotton-tie Company, Limited, and are licensed to be used for one season only, the company reserving the right, after such use, to recover possession of them wherever found."

Q. 27. You wish, then, to be understood, do you, that since the year 1872 neither the American Cotton-tie Company nor the American Cotton-tie Company, Limited, have made any sales of ties, except subject to the conditions named in your last answer as to the limited use to be made of the buckles?

A. I do.

Q. 28. Will you produce specimens of the bill-heads referred to in that answer?

A. I produce two bill-heads, one of which, marked "A," was used by all our agents during the years 1873, 1874 and 1875, and the other one, marked "B," used by all our agents during the year 1876.

36 (Complainants' counsel offers in evidence these two bill-heads, and the same are hereby marked respectively, "Complainants' Exhibit, Bill-head A" and "Complainants' Exhibit Bill-head B.")

Q. 29. What uniformity has been observed by the company or its predecessors in business as to the style of the stamp which you say has been impressed upon the buckles?

A. There has been no attempt at uniformity either in the style of letter or in the shape.

Q. 30. What have you to say as to the buckle itself in this regard—as to its exact uniformity, and so on?

A. There has been a general similarity, but no attempt at exact uniformity in the particular form of the strip of which they were made, and there have been from time to time variations in the shape and size of the opening.

Q. 31. Examine the buckles now shown you, marked respectively, "Complainants' Exhibit, Gooch Buckle," "Complainants' Exhibit, Brodie Buckle," "Complainants' Exhibit, Eureka Buckle," "Complainants' Exhibit, Dunn Buckle," "Complainants' Exhibit, Alligator Buckle," "Complainants' Exhibit, Wallis Buckle," and state whether ties having buckles like these have ever been upon the market?

A. They have.

Q. 32. Have ties using these buckles ever been the subject of litigation between yourself and the parties selling them; and, if so, in what suits?

A. They have; in suits in the fifth circuit district of Louisiana, of M. F. McComb v. Geo. Brodie; F. Cook and J. J. McComb v. Geo. Brodie; same parties against Fred. B. Ernest and Fred. Ernest; same parties against Jno. S. Wallis; same parties against Wm. Chambers; same parties against Andrew Stewart and others; and also in the western district of Tennessee, in the suit of M. F. McComb and J. J. McComb

37 v. George N. Beard, and James J. McComb v. George N. Beard; and also in a suit in the southern district of New York, of Mary F. McComb against Ira Beard, and also in the suit of Mary F. McComb against Dancy, Hyman & Co.

Witness cross-examined by B. F. THURSTON, Esq.:

Q. 33. You have referred in your testimony to various conversations which you have had with some of the defendants, or all of them; state whether you understand that the defendants, or any of them, are manufacturing the Arrow buckle or tie, or how do you understand that they procure the buckles which they sell on the market?

A. They have represented to me that they procured them from the cotton mills; that, as junk dealers, they formerly bought them and resold them as ordinary material, but that some years ago, pursuing the same line of business in Augusta, Georgia, they commenced to piece the hoops, and attached the buckles to them and sold them as cotton-ties, which led to their commencing the same mode in Providence, of using the scrap that they state they purchased from the mills. I, however, have no evidence, have never seen any evidence from them of any such transactions, and have no other knowledge of the fact except as stated by themselves.

Q. 34. You have also stated in your direct examination that you visited the State prison in Providence, where work was doing for the defendants; state whether all the work that was there going on for the defendants was not putting together second-hand bands and using second-hand ties, as distinguished from ties which had never been on the market?

A. The process going on there, as I saw it, was the straightening out of the hoops, punching and riveting them together and then bundling them, attaching to each bundle a corresponding number of the
38 buckles, which were exhibited in bulk, to the bundles so completed. So far as the bands were concerned, they bore distinct evidence of having been used and being second-hand; as to the buckles, it is impossible for me to say whether they were second-hand buckles or not, since the appearance of them bore, in some cases at least, no possible mark by which it could be determined whether they were second-hand or new.

Q. 35. You have produced several ties as specimens of the Arrow tie used by the defendants—state how you procured the same?

A. The particular ties exhibited are from a few that I collected at the Simmons Works and also at the State penitentiary of Massachusetts, on my visit to these places, on the 15th March, 1877.

Q. 36. Have you any specimens of ties which were used by the defendants prior to the filing of the bill in this case?

A. I have not.

Q. 37. You have presented two specimens of bill-heads; am I to understand that the one marked "Exhibit B," and having printed upon it "Each bundle of cotton-ties charged in this invoice consists of thirty bands," &c., is a bill-head that has been in use only since the spring of 1876?

A. It is the precise form of bill-head that has been in use since the organization of this company, over the entire period of the existence of the American Cotton-tie Company, Limited; since about February, 1876.

Q. 38. The tie as sold under the bills so headed, would be used on the cotton raised in what time—what portion of the year '76, probably?

A. For the entire crop of the season of 1876.

Q. 39. And the crop begins to come into the market during what month?

A. The earliest deliveries are about the 1st September.

Q. 40. Does the American Cotton-tie Company manufacture its ties which it sells, or the buckles?

39 A. They manufacture the buckles and procure the manufacture of the hoops by contract.

Q. 41. Does it sell through itself and its agents, both buckles and hoops?

A. It sells the band accompanied by the buckles under the conditions stated by the bill-heads, through agents.

Q. 42. Prior to the season of 1876, the bill-head "Exhibit A" was in use, I understand?

A. Yes.

Q. 43. For how long a time was it in use?

A. From the seasons 1873, 1874, and 1875.

Q. 44. At what place or places does the American Cotton-tie Company, Limited, manufacture the buckles which it puts on the market?

A. The buckles they have used the past season were partly made in Staffordshire, England, and partly in Pittsburg, Pa.

Q. 45. You mean, then, that all the buckles put upon the market were manufactured at two establishments only?

A. At two establishments only.

Q. 46. And how long a time has the American Cotton-tie Company, Limited, been accustomed to stamp upon the face of its buckles the words "licensed to use once only?"

A. Since 1872 down to the present date.

Q. 47. Are there any other manufacturers of cotton-tie buckles at the present time in this country that you know of than the American Cotton-tie Company, Limited?

A. I have no information of any being manufactured at present.

Q. 48. Was there any other manufacturer of Arrow buckles in this country during the year 1876 or 1875 that you know of?

A. None that I know of.

Q. 49. Has there ever in this country been any person other than the American Cotton-tie Company, Limited, who has manufactured
40 and put upon the market, to your knowledge, Arrow-tie buckles?

A. Not to my knowledge.

Q. 50. Please look at the specimens of buckles produced by you, as obtained from the defendants in March of the present year, and state whether each of such buckles does not bear upon its face the words "licensed to use once only?"

A. They do.

A. 51. Is it not a fact that the American Cotton-tie Company, Limited, have new buckles on hand, that in all respects correspond with some one or all of the specimens which have been produced as coming from the defendants?

A. They have new buckles on hand substantially the same to all outward appearance as those.

Q. 52. Please look at the specimen of Arrow tie or buckle now shown you, and state whether it is not a new buckle which has never been put upon the market?

A. That being a buckle supplied from the general agency, with a particular mark upon it to identify it as a new buckle, I should say it was a new buckle.

Q. 53. Please explain what the particular mark is to which you refer, identifying the buckle as a new buckle?

A. The hole drilled in one of the bars of the buckle.

Q. 54. For how long has this means of identification to distinguish old from new buckles been employed?

A. It applies simply to this buckle, and a few others that were forwarded here.

Q. 55. Do you mean to have it understood that the hole is any special means of identification, or simply that you know the fact that a lot of buckles now in Mr. Duncan's office have had a hole drilled through

them for the purpose of stringing them on a wire for conveniently retaining them, and therefore you make reference to that circum-
41 stance as a means of identification of the particular buckle shown you?

A. It is precisely on that ground that I identify it. I mean to say that as a general rule it would be impossible to identify any buckle after it has passed out of my hands, as the manufacturer. It would be entirely impossible to identify and declare to the genuineness of any particular buckle as having been made by me.

Q. 56. Before the buckle has been put into the market the iron is dipped in some solution, is it not, to protect it?

A. As a general thing it is. I have on some occasions shipped iron to agents in large quantities without so dipping it.

Q. 57. Prior to the filing of the bill of complaint in this case, did the American Cotton-tie Company, Limited, give any notice to the persons procuring their buckles or ties, that it claimed any property in the buckles themselves?

A. They certainly did, in the license clause printed upon their invoices, notifying the purchaser that they were limiting the right of use to one season only.

Q. 58. You refer to the clause that is printed in red ink upon billhead "Exhibit A," do you not?

A. Yes; and the same fact was generally advertised through the newspapers, and very generally notified through circulars.

Q. 59. Has the American Cotton-tie Company, Limited, ever undertaken, to your knowledge, prior to the filing of the bill in this case against the defendants, to repossess themselves of buckles which had been sold, attached to ties, by their agents, on the ground that it had a property in such buckles?

A. I think not.

Q. 60. Please state fully the method in which the American Cotton-tie Company, Limited, does its business, with respect to putting the ties and buckles upon the market and distributing them among consumers?

42 A. The general plan adopted by The American Cotton-tie Company, Limited, for the working of their business, has been to sell exclusively through agents, to whom they consigned the ties for sale, and at the same time furnish them with the bill-heads as exhibited, with a stipulation that all sales that they make for account of The American Cotton-tie Company, Limited, shall be made upon those forms, and only upon those forms.

Q. 61. In what way do the ties and buckles, so in the hands of the company's agents, become distributed among the consumers and planters?

A. The various agents of the company sell them to planters and merchants as they may order them.

Q. 62. Can you state whether the agents of the company sell through subagents or factors?

A. I cannot.

Q. 63. By any limitation which is expressed upon either of the billheads that have been put in evidence, it is your understanding that The American Tie Company, Limited, can prevent the sale by the purchaser of such ties of the buckles and ties as junk?

A. I understand that, in consideration of these limitations and the stamp upon the face of the buckles, the party who sells them incurs liability to an action for having done so.

Q. 64. Do you not understand that the planter has a right to sell his cotton with the tie and buckle attached to it?

A. Yes, sir.

Q. 65. When the company sells the buckles and ties, even under the limitations which you have expressed, it is not understood that the planter is to use them for the purpose of putting his cotton upon the market, and that cotton passes from hand to hand through many persons before it comes to the final consumer?

A. It is precisely that that we license him to do.

43 Q. 66. That is, you interpret the term "use once only" in the sense of using once as a means of securing a bale of cotton, do you not?

A. Precisely, I think that tie has subserved its purpose of securing the bale of cotton in transit to the mills.

Q. 67. Does the company deny, so far as you know, that the mill owner has the right to sell the buckles and ties to a rolling mill to be rolled up into billets?

(Question objected to as immaterial and inadmissible.)

A. We deny that we have ever sold the buckles and consequently that they have any right to dispose of them.

Q. 68. None of the defendants to your knowledge are engaged in packing cotton, are they?

A. Not to my knowledge.

Q. 69. Please look at the three specimens of the defendants' buckles produced by you, and state whether you have any just ground for believing that such buckles were not manufactured for the American Cotton tie Company, Limited?

(Question objected to as immaterial.)

A. Knowing the fact that orders have been given out for new or second-hand buckles to a considerable extent by parties in the vicinity of Providence and Boston, and these being found in the hands of parties hostile to us, I have the same grounds for suspecting their genuineness as for believing them to be genuine; the orders referred to did not emanate from, and were not directed to the American Cotton-tie Company, Limited, or its agents.

Q. 70. Have you any evidence which will enable you to state that the buckles which you have before you, and which you took from the defendants in March, were not manufactured for The American Cotton-tie Company, Limited.

(Question objected to as immaterial.)

44 A. I have no more evidence on the one hand than on the other

Q. 71. You mean to say, do you not, that you cannot declare that the three specimen buckles in question were not manufactured for or by the American Cotton-tie Company, Limited?

A. I cannot declare that they were or were not.

Q. 72. And is it not true that you cannot declare that the same buckles were not put upon the market by the American Cotton-tie Company, Limited, through its agents, in the manner in which similar buckles are put upon the market as you have explained?

(Question objected to as immaterial.)

A. I cannot declare that they were or were not.

Q. 73. Is there any particular mark or circumstance about the three buckles which you have put in evidence that will enable you to state that they are not buckles which The American Cotton-tie Company, Limited, has put upon the market?

(Question objected to as immaterial.)

A. No; there is not.

Q. 74. For the three seasons preceding the filing of this bill state what was the average price at which such ties and buckles were sold by The American Cotton-tie Company, Limited?

(Question objected to as immaterial.)

A. As nearly as I could state it from recollection; the average price for the three seasons preceding the last i. e., the seasons of 1873–'4, and 1874–'5 and 1875–'6—was about seven cents per pound; the season of 1873–'4 at nine and eight cents; 1874–'5 seven cents, and 1875–'6 six cents.

Q. 75. You speak of "seasons;" from what month of one year to what month of the next year does the "season" extend?

45 A. The season extends from about June of one year to about March of the next.

Q. 76. Can you give me the price of scrap-iron for the same period?

A. I cannot in this country, my operations being wholly on the other side personally; that is, I mean in England.

Q. 77. You have referred in your direct examination to various negotiations that were had between the defendants and yourself representing The American Cotton-tie Company, Limited: I wish to know, generally, whether such negotiations were not predicated upon a business arrangement, as distinguished from any recognition on the part of the defendants of liability to the complainants?

A. Those conferences had reference to purely a commercial arrangement.

Q. 78. Is it not a fact that baled cotton sold in this country is sold without tare?

A. It is.

Redirect examination by S. A. DUNCAN, Esq.:

Q. 79. You state on your cross-examination that you did not know of any persons other than The American Cotton-tie Company, Limited, and its predecessors, who have made Arrow buckles; did you mean by that anything more than that you did not know the names of any parties who have engaged in that business.

A. I do not know the names of any, but have the suspicion that quantities were made during the last season.

Q. 80. Is it not a fact that parties in Texas and other parts of the country have brought into the country large quantities of Arrow buckles, not procured directly from The American Cotton-tie Company, Limited, or its predecessors, and, so far as you know, not procured from them indirectly?

(Objected to, on the ground that the question is too indefinite in reading.)

46 A. It is.

Q. 81. The company is at present engaged in an infringement suit against the firm of Somerville & Davis, of Galveston, Texas, I believe?

A. It is.

Q. 82. And that suit is based upon the alleged unlicensed importation and sale by them of Arrow ties, is it not?

A. It is.

Q. 83. Going back through the last three years, what quantity of such ties, according to your best advices, have been offered in the market by this firm of Somerville & Davis?

A. I cannot answer accurately, but I should say that for the past three years they have sold five hundred tons a year of the Arrow ties that were not procured from the company.

Q. 84. Somerville & Davis give out that they procure their ties in England, do they not?

A. They do.

Q. 85. Do they procure them from the American Cotton-tie Company, Limited, or its agents there?

A. They do no not.

Q. 86. Do you know where they do get them?

A. I do not.

Q. 87. What has been the price of ties for the last season, i. e., the season of 1876–'7?

A. The price of the American Cotton-tie Company, Limited, has been six cents.

Q. 88. How has the quantity of unlicensed Arrow ties in the market during the past year compared with that of the years preceding?

A. The quantity of the past year has been considerably more than double of unlicensed ties.

Q. 89. How do you account for this circumstance, if you have any theory upon it?

A. I can only account for it on the theory that parties who have heretofore limited their operations to this business in so-called second-hand buckles have entered into the manufacture of the Arrow tie;
47 in all my recent interviews with parties engaged in this business they have stated that they have experienced great difficulty in getting a sufficient supply of the so-called second-hand Arrow ties; for some years in the port of Liverpool, known to be the largest cotton port in the world, I have endeavored to procure these second-hand buckles in quantity, but, with a considerable degree of diligence, the aggregate quantities collected in a season would scarcely exceed one hundred tons of buckles.

(Answer objected to as bearing on no issue in this case.)

Q. 90. Have you any knowledge as to the price at which *at* the cotton-mills, at the present time, are selling the scrap iron which comes off the bales of cotton worked up at the mills?

A. It was stated to me to be one and one-quarter cents per pound.

Witness cross-examined by B. F. THURSTON, Esq.:

Q. 91. You do not wish to have it inferred, do you, from anything that you have stated in your redirect examination, that you suppose or believe that the defendants in this case are engaged in manufacturing buckles from plate-iron, or counterfeiting the buckles of the American Cotton-tie Company, Limited?

A. I do not understand that anything said on my redirect examination is capable of this construction.

The witness desires to state further that recently it has come to his knowledge that a considerable quantity of counterfeit Arrow ties were purchased in Louisville, Ky., and that urgent inquiries have been submitted to the parties engaged in manufacturing ties for the American Cotton-tie Company, Limited, for supplies of new Arrow-tie
48 buckles, by parties no way connected with the company, and with the direct purpose of procuring them without the knowledge or consent of the company.

(Statement objected to as immaterial and irrelevant.)

J. J. McCOMB.

Subscribed and sworn to before me this 17th day of April, A. D. 1877.

R. E. STILWELL,
Examiner, &c.

49 *Defendants' proofs.*

Circuit court of the United States, district of Rhode Island.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al.,
vs.
SIMON W. SIMMONS, C. W. SIMMONS, AND W. W. Simmons.

Testimony taken on behalf of the defendants under the 67th rule in equity, as amended, before James S. Greves, acting as special examiner by consent of parties:

NEW YORK CITY, *June 2d*, A. D. 1877.

Present, Samuel A. Duncan, counsel for complainants; B. F. Thurston, counsel for defendants.

WILLIAM W. SIMMONS, a witness called by the defendants, being duly sworn, in answer to interrogatories propounded by B. F. THURSTON, testifies as follows:

1. Q. What is your name, residence, age, and occupation?

A. William W. Simmons; I reside in Johnston, R. I.; my place of business is Providence, R. I.; age is 31 years last March; I am agent of the Providence Cotton-tie Company.

2. Q. Are you one of the defendants in this case?

A. Yes, sir.

3. Q. State whether you or any firm with which you are or have been connected, have been engaged in using buckles for cotton-ties of any description in baling cotton for the market?

A. No, sir.

50 4. Q. Please state what is the business in which the defendants in this case are engaged, which is connected in any manner with metallic cotton-tie buckles?

A. Putting up pieced ties; the hoop and buckles together make a tie.

5. Q. From what source have you procured the hoops and the buckles in which you have dealt?

A. From the cotton mills.

6. Q. In what section of the country?

A. Cotton mills in New England and some in the Middle States; at least one of the Middle States, New York.

7. Q. Are the ties new when they come to you, or in what condition are they?

A. They are old; second hand.

8. Q. State how they come into the possession of the mills from whom you buy them.

(Question objected to as calling for hearsay testimony.)

A. They come around the bales of cotton used at the mills.

9. Q. Are you familiar from personal knowledge with the manner in which cotton is now packed for the market?

A. Yes, sir.

10. Q. State how cotton is now secured in bales, when put upon the market by the planter?

A. It is put into a press and covered with bagging; then it is pressed and secured by hoops and buckles, making ties, instead of ropes, as formerly used.

11. Q. What person or corporation, if you know, supplies the entire market with new bands and buckles, constituting ties for baling cotton?

A. The American Cotton-tie Company, Limited.

12. Q. Do you know of any other person, firm, or corporation that is, or since the time that plaintiffs' title accrued on the 1st January, 1876, has been furnishing so-called new Arrow ties or buckles for the market?

51 A. I do not.

13. Q. In what shape or condition are the straps and buckles when they are furnished to you from the cotton-mills?

A. In the shape of scrap; the hoops are cut and bent, and put together in rude bundles for convenience in handling. The buckles generally come on the hoops and on the short pieces of scrap. We buy the long and the short pieces together, and the buckles are attached to the long piece or the short piece, according as the band happened to be cut when the bale was opened.

14. Q. State fully what you do with this material so purchased from the mills.

A. We open the bundles and straighten the hoops by hand as well as we can, then roll the hoops—cold roll—punch them, rivet them, cut them to proper length, bundle them. In bundling, attach the buckles that come with the hoops, one buckle for each hoop. We then paint them.

15. Q. Is a buckle attached to each strap, or are the buckles en masse attached to the bundle?

A. They are put upon two hoops near the center of the bundle between the ends.

16. Q. Have you ever had anything to do in any other way than you have explained with the manufacture or use of Arrow-tie buckles?

A. No, sir.

17. Q. Please look at the three specimens of Arrow-tie buckles produced as an exhibit, and referred to in the deposition of James J. McComb, as taken from your establishment in Providence, and marked "Compl'ts' Exhibit, Def'ts' Arrow-tie Buckles," and state by whom, if you know, said buckles were made, and state the grounds of your knowledge.

A. The American Cotton-tie Company, Limited, or their agents. My reasons for so stating are as follows: I have seen their goods in stock in the different markets in the South, and on bales of cotton, and they are identical with the exhibit produced.

52 18. Q. Have you paid special attention to the characteristics of the American Cotton-tie Company, Limited's, Arrow-tie buckles so as to speak with confidence in your answer to the last question?

(Objected to as leading.)

A. I have.

19. Q. Do you also find upon said three Arrow-tie buckles an imprint made by the die; and, if so, what is it?

A. I do find the imprint; find two imprints; one "Pat'd '58 and '61," the other "Licensed to use once only."

20. Q. For how long time have you known of such mark, "Licensed

to use once only," to be put upon the Arrow-tie buckles manufactured and sold by the American Cotton-tie Company, Limited?

A. Since January, 1876.

In answer to cross-interrogatories propounded by Mr. S. A. DUNCAN, counsel for complainants, witness says:

21. Q. How long have you been engaged in putting up pieced ties?

A. I think we commenced it in 1873.

22. Q. Prior to 1873, had you been in the habit buying cotton-tie scrap from the mills?

A. No, sir; I had not individually; my brothers had.

23. Q. Do you mean your brothers who are co-defendants in this suit?

A. Yes, sir.

24. Q. What use did they make of that scrap prior to the manufacture of pieced ties?

A. I understand that they sold it as old scrap-iron to the rolling-mills, but I was not associated in business with them at the time.

25. Q. What is this old iron which you purchase from the mills at the present time called in the invoices or bills of sale?

A. Usually cotton-bale hoops; sometimes scrap.

53 26. Q. Isn't it more usually called scrap than cotton-bale hoops?

A. I have had it invoiced in numerous ways, such as "hoop iron," "old cotton-bale hoops," and "bale-ties," "hoops and buckles."

27. Q. I presume you pay for it the price of scrap and not the ruling price of bale-ties; what is known in the market as bale-ties?

A. I pay the price of scrap.

28. Q. Averaging at the present time about how much?

A. About 1¼ cents per pound delivered in Providence.

29. Q. Was that about the ruling price last year, 1876?

A. It went a little higher; some of it as high as a cent and a half per pound.

30. Q. Do you get any other buckles in this scrap besides the "Arrow" buckles?

A. Yes, sir.

31. Q. Any other "open-slot" buckles?

A. Yes, sir.

32. Q. Do you use these in making up your pieced ties that go into the market; these other open slot buckles?

A. Yes, sir.

33. Q. Among these open slot buckles used by you in the manufacture of pieced ties for the market, are there included buckles of the style known as the "Dunn," the "Wallis," the "Eureka," the "Alligator," the "Gooch," and the "Brodie"?

A. Some of them we used. We have used a small percentage of buckles, like those marked Complainants' Exhibit, Eureka Buckle, also Complainants' Exhibit, Wallis Buckle.

34. Q. Do you know who manufactured the "Eureka" and the "Wallis" buckles which you have used in your business, as above stated?

A. No, sir; but I understand that the American Cotton-tie Company, Limited, sold them.

54 35. Q. For how long a time have you been using Eureka and Wallis buckles?

A. I could not say.

36. Q. Have you not used them more or less ever since you entered upon the manufacture of pieced ties?

A. No, sir.

37. Q. Was not the Eureka tie sold prior to 1873?

A. Not to my knowledge; my knowledge comes from seeing them come with the hoop-iron from the mills.

38 Q. Did you not see Eureka and Wallis buckles in this scrap-iron prior to 1876?

A. No, sir.

39. Q. Are you certain there were no such buckles in the scrap prior to that time?

A. None that we used.

40. Q. Do you wish by this to have it understood that prior to 1876 you took out Eureka and Wallace buckles from the scrap, and used only the Arrow?

A. If there was any come with it; I can't say that there was any come with it.

41. Q. Do you know the fact to be that the American Cotton-tie Company, Limited, has ever sold any Eureka or Wallis ties or buckles?

A. I have been so informed, but do not know it of my own knowledge.

42. Did you get this information from the officers of the American Cotton-tie Company, Limited?

A. No, sir.

43. Q. When first did you know of this stamp "Licensed to use once only" being placed upon the "Arrow" buckle?

A. In January, 1876.

44. Q. And yet you had been handling "Arrow" buckles for two or three years prior thereto, had you not?

A. Yes, sir.

55 45. Q. Was there any stamp upon the Arrow buckles used by you in your manufacture, from 1873 up to 1876?

A. Yes, sir.

46. Q. What was it?

A. "Patented '58 and '61."

47. Q. Nothing else?

A. Nothing else.

48. Q. Did you have occasion, prior to 1876, to examine or notice the goods of the American Cotton-tie Company, as then put upon the market?

A. Yes, sir.

49. Q. But you knew nothing of this stamp, "Licensed to use once only," put upon the buckles prior to that time?

A. Nothing.

50. Q. Are you interested in the firm of C. W. Simmons & Co., of Augusta, Ga.?

A. No, sir.

51. Q. Are any of the defendants in this suit interested in that firm?

A. Yes, sir; Simon W. Simmons and Charles W. Simmons.

52. Q. Do you know anything of a suit brought by the American Cotton-tie Company, Limited, against said firm, to enjoin them from using "Arrow" and other open-slot buckles?

A. I am informed that there is such a suit.

53. Q. Do you also understand that an injunction has issued against the defendants in that suit?

A. I am informed that a preliminary injunction has issued.

(Complainants' counsel offers in evidence an exemplified copy of

the record in the suit last above referred to, and the same is hereby marked "Complainants' Exhibit C. W. Simmons & Co. Record.")

54. Q. If I understand you aright, the only ground which you have for believing that the buckles marked "Complainants' Exhibit, Defendants' Arrow Buckles," were made by the American Cotton-
56 tie Company, Limited, is the circumstance of their general resemblance to the goods which you have seen in the hands of the company's agents; is this a correct understanding of your view on this point?

A. That is not the only ground; those buckles—defendants' Arrow buckles, are the same as those that I have seen in the hands of the company's agents.

55. Q. You do not mean, of course, that you ever saw these three identical buckles in the hands of the company's agents.

A. No, sir.

56. Q. Do you mean that you ever saw buckles that were precisely like those?

A. I do mean that.

57. Q. That is, of the exact length and thickness, and width as those.

A. Yes, sir.

58. Q. Have you ever compared those buckles with buckles which you know to be genuine buckles of the company, to see whether the measurements are precisely the same?

A. No, sir.

59. Q. Please compare the buckles "Defendants' Arrow Buckles," with the three buckles marked "Complainants' Exhibits, Arrow Buckle, No. 2, Arrow Buckle, No. 4," and state whether the one set has exactly the same dimensions as the other?

A. Yes, sir; I think they have.

60. Q. Compare the "Defendants' Arrow Buckles" with the buckle marked "Defendants' Exhibit, Specimen Arrow Buckle," and state whether you find that the latter has precisely the same dimensions as any one of the former?

A. There is a very slight difference in the width of the buckles.

61. Q. Do you think it would be possible for a counterfeiter to manufacture buckles resembling the genuine Arrow buckles as closely as the three buckles marked "Defendants' Arrow Buckles" do?

57 A. I do not believe they could.

62. Q. Is it your idea that all the buckles of the complainant are made with one particular die?

A. No, sir.

63. Q. The dies wear out, and have to be replaced with new ones, do they not?

A. I suppose they do; yes, sir.

64. Q. Couldn't a counterfeiter make exact duplicate of the original die, as well as an employé of the company?

A. I do not know; it has never been illustrated to me.

65. Q. What knowledge have you of open-slot buckles being imported into this country by other parties than the American Cotton-tie Company, Limited?

A. None.

66. 2. Have you not heard that such is the case?

A. I have been told that the second hand buckles have been imported here from the mills in Manchester, England.

67. Q. Have you not heard that the new buckles of this description have been imported?

A. No, sir.

68. Q. Have you not some reason to think that they have been?

A. I have none.

69. Q. You said on your direct examination that the buckles which you procure from the mills "generally come on the hoops." I suppose then that some of them are not attached to the pieces of the hoops. Is that so?

A. Some are not; yes, sir.

70. Q. In what shape do you get such buckles as are not on the hoops?

A. Sometimes in an old barrel or box, with the short pieces; sometimes they are shoveled into the car loose with the scraps, or into the teams.

71. Q. Can you tell by simply looking at a buckle, or by any other test, whether it is a "second-hand" buckle?

58 A. In some cases I could; now and then one is distorted by the strain of the bale.

72. Q. Generally, how is it?

A. Generally there is no impression; the looks of them, the general appearance would show that they had been used.

73. Q. Do you mean then that as a rule you can determine by the general appearance of the buckle whether or not it has been once used?

A. Yes, sir.

74. Q. What, if anything, in the general appearance of three buckles "Defendants' Arrow Buckles" indicates that they have been once used?

A. I find the edges of the central opening appear to be worn.

75. Q. Is this worn edge generally characteristic of buckles that have been once used?

A. Yes, sir.

76. Q. Is there any other indication about those buckles showing to your mind that they have been once used?

A. No; I do not see that there is.

77. Q. Do you and your associates examine the buckles procured from the mills, to ascertain whether they bear the marks of former use, or do you take it for granted, without inspection that they are second-hand?

A. I examine them in some cases.

78. Q. For what purpose?

A. To see that they are the genuine buckles; and if there are any new buckles among them I would able to detect them.

79. Q. How so?

A. By general appearance.

80. Q. Anything besides their worn edges?

A. By general appearance; sometimes cotton sticks to the varnish they are painted with.

81. Q. Did you ever find any buckles in these examinations which did not have cotton stuck on to them?

59 A. Yes, sir.

82. Q. And which did not have worn edges?

A. I think I have; yes, sir.

83. Q. What did you do with such buckles when you found them?

A. I left them right where they were.

84. Q. You didn't use those?

A. Yes, sir; I believe we used them.

85. Q. You mean, then, that you left them to be used with the rest?

A. Yes, sir.

86. Q. Then, practically, this inspection of buckles never amounted to anything?

A. It certainly did.

87. Q. How so?

A. Throwing out all buckles other than of this character.

88. Q. What character?

A. Than the open-slot buckles.

89. Q. Then the real object of your inspection was to separate open-slot buckles from closed buckles, was it not?

A. Well; yes, sir.

90. Q. Did you in those inspections find open slot-buckles which seemed to be new buckles or counterfeit buckles; and, if so, what did you do with them?

A. I did not find any?

91. Q. If I understand you, you and your associates have been engaged in this manufacture of pieced ties, using Arrow and other open-slot buckles procured from the mills each season since 1873; is that so?

A. Yes, sir.

92. Q. About what proportion of the scrap of the New England and New York mills passes through your hands?

A. I should think one-half.

93. Q. And this will make up about how many tons of pieced ties?

60 A. From a thousand to fifteen hundred tons per annum.

WILLIAM W. SIMMONS.

Subscribed and sworn to before me, this 2d day of June, 1877.

JAMES S. GREVES,
Special Examiner.

61 *Complainants' proofs in rebuttal.*

Circuit court of the United States, district of Rhode Island.

THE AMERICAN COTTON-TIE CO., LIMITED, et al. *vs.* S. W. SIMMONS ET AL. } In equity.

Testimony in rebuttal taken in New York, at the office of S. A. Duncan, esq., in behalf of the complainants, June 8, 1877, before R. E. Stillwell, examiner.

JAMES J. MCCOMB, being recalled, testifies in reply to interrogatories propounded to him by S. A. DUNCAN, Esq., as follows:

Q. 1. Have you been previously examined in this suit?

A. I have.

Q. 2. Examine the buckles marked in this suit as "Complainants' Exhibit, Defendants' Arrow Buckles," and state whether the edges of the central opening in these buckles appear to be worn.

A. They do not.

Q. 3. Can you, from an inspection of these edges, determine whether the buckles have ever been used?

A. I cannot, and I will add that I do not think any one else can.

Q. 4. What effect does the use of an Arrow buckle upon a cotton bale have upon the edges of the central opening?

A. Ordinarily none whatever that can be detected; sometimes the buckle will become somewhat twisted and distorted, and thus show that it has been used, but I do not recall that I have ever in all
62 my experience seen a buckle in which the edges of the central opening were worn so as thereby to show that the buckle had been used.

Q. 5. How do the edges of the central opening in "Complainants' Exhibit, Defendants' Arrow Buckles," compare as regards sharpness and dullness with the corresponding parts of "Complainants' Exhibit Arrow Buckle No. 2 and Arrow Buckle No. 4"?

A. I see no difference. The latter are as dull as the former, although the latter are new buckles that have never been put in use.

J. J. McCOMB.

Subscribed and sworn to before me, this 8th day of June, 1877.

R. E. STILWELL, *Examiner.*

The cross-examination of the above witness is hereby waived, as also formal notice of the examination.

B. F. THURSTON,
Counsel for Def'ts.

63 *Cook patent.*

U. S. Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify, that the annexed is a true copy from the records of this office of the letters patent, No. 19490, granted to Frederic Cook, March 2, 1858, for "improvement in metallic ties for cotton bales," together with the disclaimer filed by the said Cook on the first day of February, 1872, and the certificate of extension of said letters patent.

In testimony whereof, I, R. H. Duell, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this first day of December, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

[L. S.] R. H. DUELL, *Commissioner.*

No. 19490.

The United States of America to all to whom these letters patent shall come:

Whereas, Frederic Cook, of New Orleans, La., has alleged that he has invented a new and useful improvement in metallic ties for cotton bales, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtain-

ing an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

64 These are therefore to grant, according to law, to the said Frederic Cook, his heirs, administrators or assigns, for the term of fourteen years from the second day of March, one thousand eight hundred and fifty-eight, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Frederic Cook, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington, this second day of March, in the year of our Lord one thousand eight hundred and fifty-eight, and of the Independence of the United States of America the eighty-second.

JACOB THOMSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
[L. S.]
J. HOLT,
Commissioner of Patents.

SPECIFICATION.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Frederic Cook, of the city of New Orleans, parish of Orleans, State of Louisiana, have made a new and useful improvement in "iron ties or hoops for fastening cotton bales, and other packages," and I hereby declare the following is a full and exact description thereof, reference being had to the accompanying drawings and the letters of reference marked thereon, making a part of this specification, the same letters being used to designate the same parts shown in the different figures:

My invention consists of the friction buckle or clasp (A), Figs 1, 2 and 3, representing three different views of it on drawing dated September the fifteenth, 1857. This may be made of either malleable
65 iron or sheet-iron, and in latter case formed in dies. Also the manner of attaching the end of the iron ties (B) (B) to it, which is done by looping them into the clasp, as shown at Figs. 4 and 5, which represent two views of the tie ends where they are fastened to the clasp, Fig. 4 being a section, and Fig. 5 an outside view. The extreme ends of the ties or hoops are thrust underneath the portion of the buckle marked (*c*, *c*), as shown at Fig. 4; the effect thereof is, that when the strain comes on the hoop by the relaxation of the press containing the bale, the greater the strain the tighter the ends are held by the friction of the part of the hoop (D), Fig. 4, against the ends (E), which are pressed tightly against the portion of the buckle marked (C), for the portions of the clasp marked (F), which hold the two looped ends, not being in the direct line of the hoop, but off to one side, the tendency of the hoop or tie when strained, is to pinch up hard against the ends (E), and thereby hold them tightly against the parts of the buckle (C). The ties may be furnished ready for use with one end fixed in the buckle, and the other end being passed around the bale is put through the buckle; being

brought through long enough, say ten or twelve inches, it can be bent over by hand, and thrust under the part of the buckle as before described; then when the strain comes on the hoop, by the relaxing of the press, it is drawn perfectly tight, and the friction on the ends of ties where they come in contact with (C), on the buckle, prevents them slipping. By this kind of buckle, very light iron may be used for the hoops, because only sufficient strength is required to resist the strain of the bale, there being no strength of the iron taken away by any perforation or cutting, which, by diminishing the strength, would cause heavier iron to be used. No previous preparation of the hoop-iron is required, except cutting off to the required lengths, and the iron used may be such as can be easily bent by hand. If the cotton-bale
66 has to pressed a second time for shipment to foreign ports after leaving the plantation, so as to stow away into ships in smaller compass, this invention is especially valuable, for then one end of the hoop is cut off near the buckle, the looped end withdrawn from it, and when the bale is repressed into a smaller compass, the fresh end of the tie is put into the buckle again, and being bent over, is thrust under the place in the buckle as before; the expansion of the bale again draws the hoop tight, when the pressing power is removed.

My invention also embraces the buckle, either with solid bars across as before described, or one of the end bars having a slot cut through, as shown on drawing dated October the fifth, 1857, and signed by me, October the tenth, 1857. This part of my invention consists in the cutting of a slot (H), through the barb (I) of the buckle or clasp (K), under which bar the end of the tie or hoop is pushed or slipped sidewise easily by hand. After the tie is drawn tight through the clasp and bent over, it is slipped underneath the bar (I) sidewise through the slot (H). The hole (through clasp) marked (L), is made longer than the other two holes, for the purpose of pushing the end of the tie enough to one side, after it is through the slot (H), to get it under the bar (I.) When it is all under, it can then be brought again in line with the rest of the tie into the center of the clasp. This slot enables the tie to be fastened much quicker and more easily than by pushing the end of the tie endwise under the bar (I) when not cut through by a slot. The slack in the tie, when around the bale before the press is relaxed, can also be taken up and held better by the buckle with a slot in it, for the tie can be bent short over the part of the clasp or buckle marked (M), where it is looped on and put under the bar (I) sidewise as described, instead of endwise.

What I claim as my invention, and desire to secure by letters patent, is:

The "friction clasp" or buckle, for attaching the ends of iron
69 ties or hoops, for fastening cotton bales and other packages, so that the ties are prevented slipping by the friction against a certain portion of the buckle.

(Here follow 2 diagrams marked pages 67 & 68.)

I claim also the looping of the ends of iron ties or hoops for bales into a buckle, by the form of which they are prevented slipping by friction when the strain of the expansion of the bale comes on the ties. The ends of the hoops or ties not being attached together in any way, the connection being formed by a distinct buckle or friction-clasp.

Also I claim the herein-described "slot," cut through one bar of clasp, which enables the end of the tie or hoop to be slipped sidewise under-

neath the bar in clasp, so as to effect the fastening with greater rapidity than by passing the end of the tie through endwise.

FREDERIC COOK.

Witnesses:
F. W. C. COOK,
FRANCIS L. COOK.
A. L. G.

Disclaimer.

To the Commissioner of Patents:

Your petitioner, Frederic Cook, formerly of New Orleans, State of Louisiana, now of the parish of St. Landry, State aforesaid, respectfully represents that he is the inventor and patentee of an improvement in metallic ties for cotton bales, for which letters patent of the United States were granted to him on the 2d March, 1858, numbered 19490. That he has disposed of the first term of the patent as aforesaid, and, consequently, has no interest in said first term; but that he is the owner of the extended term, if the patent should be extended; and that he has reason to believe that through inadvertence, accident, or mistake the specification and claim of said letters patent are too broad, including that of which he was not the first inventor.

Your petitioner therefore hereby enters his disclaimer to that part of the *the* claim in said specification, which is in the following words, to wit: "I claim the friction clasp or buckle for attaching the ends of iron ties or hoops for fastening cotton bales and other packages, so that the ties are prevented slipping by the friction against a certain por-
69*a* tion of the buckle," which disclaimer is to operate to the extent of the interest in said letters patent, which may vest in your petitioner by virtue of the extension thereof, if extended.

FREDERIC COOK.

The words "formerly" in the 2d and the words "now of the parish of St. Landry, State aforesaid," in the 3d lines interlined before signing.

Witnesses:
A. B. STOUGHTON,
EDMUND MASSON.

WASHINGTON CITY, D. C., *January 31st*, 1872.

Filed February 1st, 1872.

Certificate of extension.

Whereas upon the petition of Frederic Cook, of Washington, Louisiana, for the extension of the patent granted to him March 2, 1858, for an "improvement in metallic ties for cotton bales," the undersigned in accordance with the act of Congress approved the 8th day of July, 1870, entitled "An act to revise, consolidate, and amend the statutes relating to patents and copyrights," did, on this seventeenth day of February, 1872, decide that said patent ought to be extended.

Now, therefore, I, Mortimer D. Leggett, Commissioner of Patents, by virtue of the power vested in me by said act of Congress, do renew and extend the said patent, and certify that the same is hereby extended for the term of seven years from and after the expiration of the first term, viz, from the second day of March, 1872, which certificate being duly entered of record in the Patent Office the said patent has

now the same effect in law as though the same had been originally granted for the term of twenty-one years.

And it is hereby ordered that this certificate of extension be entered on a certified copy of said patent.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed this seventeenth day of February, 1872, and of the Independence of the United States the ninety-sixth.

[L. S.] M. D. LEGGETT, *Commissioner.*

Disclaimer filed February 1, 1872.

69*b* *Brodie reissue.*

U. S. Patent Office.

To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissue letters patent No. 5333 granted James Jennings McComb, March 25th, 1873, for improvement in cotton-bale ties.

In testimony whereof I, R. H. Duell, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this first day of December, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

[L. S.] R. H. DUELL, *Commissioner.*

No. 5333. Reissue.

The United States of America to all to whom these presents shall come:

Whereas George Brodie, of Plum Bayou, Arkansas, assignor to James Jennings McComb, of Liverpool, England, has presented to the Commissioner of Patents a petition praying for the reissue of letters patent for an alleged new and useful improvement in cotton-bale ties (for which letters patent were issued to him, dated March 22, 1859, the same surrendered and new letters issued to him dated April 27, 1869, and extended seven years from March 22, 1873, which last letters having been surrendered the same have been canceled and new letters ordered to issue to said assignee on an amended specification), a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas upon due examination made the said claimant is adjudged to be justly entitled to a patent under the law.

Now, therefore, these letters patent are to grant unto the said James Jennings McComb, his heirs or assigns, for the term of twenty-one years from the twenty-second day of March, one thousand eight hundred and fifty-nine, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington,
70 this twenty-fifth day of March, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States of America the ninety-seventh.

[SEAL.] B. R. COWEN,
Acting Secretary of the Interior.

Countersigned:
M. D. LEGGETT,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

George Brodie, of Plum Bayou, Arkansas, assignor to James Jennings M'Comb, of Liverpool, England. Improvement in cotton-bale ties.

Specification forming part of letters patent No. 23291, dated March 22, 1859; reissue No. 3405, dated April 27, 1869; extended seven years; reissue No. 5333, dated March 25, 1873.

SPECIFICATION.

To all whom it may concern:

Be it known that I, George Brodie, of Plum Bayou, Jefferson County, Arkansas, have invented certain improvements in cotton-ties or metallic bands and their connections for baling, of which the following is a specification:

My invention relates to the combination with open-slot ties of metallic bands having their ends free, and held in position by the expansion of the bale.

Figure 1 is a top view of one form of my improvement. Fig. 2 is a top view of another form of my improvement. Fig. 3 is a vertical section of the device represented in Fig. 1. Figs. 4 and 5 are similar sections with connecting links of different forms. Fig. 6 is a top view of the open slotted link shown in Figs. 7, 13, and 14. Figs. 11, 12, 15, and 16 represent other modifications of the tie.

In Fig. 1 the band is held in place by means of pins inserted in loops at each end. The ends of the band with the inserted pins are brought together and the tie is slipped over them, as shown in Fig. 7, and
72 then turned, as in Figs. 1 and 3; or the curve may be wide

(Here follows diagram marked page 71.)

enough, as shown in Fig. 7, to permit the ends of the pins to pass it in the middle part without turning, while they are caught and held by the sides of the tie near the end.

Another mode of using the pins is shown in Figs. 11 and 12, where the band is folded upon itself and thus passed double around the pins C so as to give additional strength to the bend and permit the use of lighter bands.

Figs. 6, 7, 13, and 14 show an open slotted link or tie. In Fig. 7 this is shown in connection with pins, and in Figs. 13, 14, and 15 in connection with the band alone, the ends being turned under the link and held in position by the pressure exerted by the expansion of the bale. In the latter mode of use the slack may be readily taken up by forming the loop in the iron at the moment of making the fastening and passing the end thus looped through the opening in the side of the link. The band is thus slipped sidewise through the opening into the slot instead of thrusting it through endwise.

What I claim as my invention is:

1. The swell or curve in the link for the purpose of facilitating the introduction of the bands with their inserted pins substantially as described.

2. The double lap of the band as shown in Figs. 11 and 12 in combination with a metallic link.

3. The combination of an open slot for introducing the band sidewise

with a link having a single rectangular opening for holding both ends of a metallic band and the band.

4. An open slotted link, when combined with metallic bands, the ends of which are turned under the link and held in position by the expansion of the bale.

5. The method of baling cotton with metallic bands and of
73 taking up the slack of the band by bending the same at any desired point into the form of a loop and passing such loop sidewise through an open slit into the slot intended to receive it and over the bar of the clasp intended to hold it.

GEORGE BRODIE.

Witnesses:
JAMES S. GRINNELL.
HARRY COLEMAN.

McComb Patent.

U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent No 31252 granted to J. J. McComb, January 29, 1861, for "improvement in iron ties for cotton bales," together with the certificate of extension of said letters patent.

In testimony whereof I, R. H. Duell, Commissioner of Patents, have caused the seal of the Patent Office to be hereto affixed this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

[L. S.] R. H. DUELL, *Commissioner.*

No. 31252.

The United States of America to all to whom these letters patent shall come:

Whereas J. J. McComb, of New Orleans, Louisiana, has alleged that he has invented a new and useful improvement in iron ties for
74 cotton bales which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said improvement and praying that a patent may be granted for that purpose.

These are therefore to grant according to law to the said J. J. McComb, his heirs, administrators, or assigns, for the term of fourteen years from the twenty-ninth day of January, one thousand eight hundred and sixty-one, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said improvement, a description whereof is given in the words of the said J. J. McComb in the schedule hereunto annexed and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington this twenty-ninth day of January, in the year of our Lord one thousand eight hundred and sixty-one, and of the Independence of the United States of America the eighty-fifth.

MOSES KELLY,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
[L. S]
S. T. SHUGERT,
Acting Commissioner of Patents.

SPECIFICATION.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, J. J. McComb, of New Orleans, in the parish of Orleans, and State of Louisiana, have invented a new and improved mode of fastening iron hoops on cotton bales, and I do hereby declare that the following is a full and exact description of the same, to wit:

75 The nature of my invention consists in the use of a peculiarly-shaped buckle as a fastening or tie for the ends of the iron hoops which it is desired to substitute in place of the hemp ropes now made use of in baling cotton, said iron hoops being so much safer in case of fire.

To enable those engaged in or familiar with the baling and compressing of cotton to make and use my invention I will now proceed to explain the process by means of the three diagrams Nos. 1, 2, and 3 hereunto attached and forming part of this instrument.

The tie or buckle is a piece of wrought iron or other metallic substance about the eighth of an inch thick, an inch and three-quarters wide, and two inches long (the size being modified to suit the width of the hoop used), with an oblong hole or aperture cut or punched through the center.

The diagram No. 1, lettered A, B, C, D, represents the exact size of one of the ties or buckles with aperture cut to receive a hoop an inch wide. The sides A B and D C are equal and parallel, as are also the sides B C and A D.

The letters M, I, J, K, L show the shape of the aperture or hole which is punched or cut through the center of the plate, the two longer sides M I and K L being equal in length to the width of the hoop of the size above mentioned. In the side A D is cut a slot which is indicated on the diagram by the letters E F and G H, the side G H of the slot being turned outward the eighth of an inch to facilitate the insertion of the end of the hoop.

Diagram No. 2 is a side view of the buckle or tie and is given to show more clearly the slight outward bend in the side G H of the slot. The sides of this diagram are lettered exactly as those of No. 1.

Diagram No. 3, also lettered as No. 1, represents the buckle or tie in use, the pieces marked "hoop" being the two ends of the iron hoop as they appear when fastened on the cotton bale.

(Here follows diagram marked page 76.)

77 What I claim as my invention and desire to secure by letters

patent is forming a link or tie with an oblong aperture one end of which is arrow-shaped, or rather presents two sides of an equilateral triangle, the design of this arrow-shaped end being not only to force the hoop or bend of the hoop over the slot, which it does with unerring precision when the bale expands after being released from the press, but also to secure an equal bearing upon the separated parts of the slotted side of the tie.

J. J. McCOMB.

In presence of:
J. Q. A. FELLOWS.
GEORGE MILLARD.
Ex'd.—Jas. M.

Certificate of extension.

Whereas, upon the petition of J. J. McComb, of Liverpool, England, for the extension of patent granted him, January 29, 1861, for "improvement in iron ties for cotton bales," the undersigned, in accordance with the act of Congress, approved the 8th day of July, 1870, entitled, "An act to revise, consolidate, and amend the statutes relating to patents and copyrights," did, on this twenty-eighth day of January, 1875, decide that said patent ought to be extended:

Now, therefore, I, John M. Thacher, Commissioner of Patents, by virtue of the power vested in me by said act of Congress, do renew and extend the said patent, and certify that the same is hereby extended for the term of seven years from and after the expiration of the first term, viz, from the twenty-ninth day of January, 1875, which certificate being duly entered of record in the Patent Office, the said patent has now the same effect in law as though the same had been originally granted for the term of twenty-one years.

And it is hereby ordered that this certificate of extension be entered on a certified copy of said patent.

In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed, this 28th of January, 1875, and of the Independence of the United States the ninety-ninth.

[L. S.] J. M. THACHER, *Commissioner.*

78 *Cook assignments.*

DEPARTMENT OF THE INTERIOR.

U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify, that the annexed is a true copy from the records of this office of assignments found therein relating to letters patent No. 19490, granted to Frederic Cook, March 2, 1858, "metallic ties for cotton bales."

In testimony whereof, I, R. H. Duell, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

[L. S.] R. H. DUELL, *Commissioner.*

(1.) Cook with McComb. (B[15], p. 457.)

Agreement entered into this twenty-second day of January, the year eighteen hundred and seventy-two, between James Jennings McComb, of Liverpool, England, and Frederic Cook, of the parish of St. Landry, State of Louisiana, witnesseth:

Whereas, the said Cook has made application to the United States Patent Office for an extension of his patent on metallic cotton-ties, dated March 2d, 1859, No. 19490; and the said McComb being desirous of purchasing the extension of said patent from said Cook, if granted by the Patent Office, and the said Cook not having agreed to sell the said extension of said patent to any other person or persons, and the sole interest in the extension being vested in him by law as the original inventor, and being desirous of selling the same, if granted, it is agreed between the said Cook and McComb that the said Cook shall, when the said extension is granted, assign over to the said McComb all his rights, title, and interest to the extension of his said patent for and in consideration of the sum of twenty-five thousand dollars, payable as follows:

Seven thousand five hundred dollars cash when the extension is issued and the assignment to said McComb is made and executed by Cook.

The balance, seventeen thousand five hundred dollars, to be paid said Cook by said McComb in seven annual payments of twenty-five hundred dollars each, for which the said McComb will furnish his notes or will accept drafts on him, payable at one, two, three, four, five, six, and seven years from date of the extension of said patent.

79 For the faithful performance of this agreement we mutually bind ourselves, our heirs, administrators, or assigns, in the sum of twenty-five thousand dollars as liquidated damages, recoverable before any court of competent jurisdiction.

In witness whereof we have hereunto set our hands and seals this twenty-second day of January, 1872.

J. J. McCOMB. [SEAL.]
FREDERIC COOK. [SEAL.]

[5 cts. 5 F. C. Jan. 22, 1872. 5 cts. 5.]

Witnessed by:
F. B. PARKINSON,
EDWARD STUART.

STATE OF LOUISIANA,
City of New Orleans:

Be it known, that on this twenty-third day of January, A. D. eighteen hundred and seventy-two, before me, Andrew Hero, jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, personally appeared the above-named James J. McComb and Frederic Cook, to me known to be the individuals named in and who executed the above instrument of writing, and severally acknowledged that they executed the same as their act and deed for the considerations, uses, and purposes therein stated.

As witness my hand and seal at New Orleans aforesaid, on the day and date aforesaid.

[SEAL.] ANDREW HERO, JR., *Not. Pub.*

Recorded March 18, 1872.—C. E. L.

(2.) Cook to McComb. (M[15], p. 55.)

Whereas, letters patent of the United States for improvement in metallic ties for cotton bales were granted unto me March 2d, 1858, which said letters patent have been extended for seven years from and after the expiration of the original term, to wit, for seven years from March 2d, 1872.

And, whereas, James Jennings McComb is desirous of acquiring all my right, title, and interest in said extended term of said letters patent:

Now, therefore, in consideration of the sum of twenty-five thousand dollars to me in hand paid, the receipt whereof is hereof acknowledged, I have assigned and sold, and by these presents do
80 assign, sell, and convey to the said James Jennings McComb, his assigns and legal representatives, all my right, title, and interest in and to the said letters patent for the extended term thereof, and in and to the invention included therein; to have and to hold the same to the use and behoof of the said James Jennings McComb to the full end of the term of said letters patent as extended, to wit, to the 2d day of March, 1879, as fully and completely as I could have held or enjoyed the same, if this assignment and sale had not been made.

[5 cts. 5. J. J. McC., Mar. 21, '72. 5.]

Witness my hand and seal this twenty-first day of March, in the year 1872.

FREDERIC COOK. [SEAL.]

Witnesses:
T. B. PARKINSON.
R. W. RAYNE.

I hereby consent to the above assignment.

TAMELIA R. COOK.

Received, New Orleans, March 21st, 1872, of James Jennings McComb, the sum of seven thousand dollars, being in full of the amount agreed to be paid and secured to me by virtue of an agreement executed August 18, 1870, between Frederic Cook, Tamelia R. Cook, and J. J. McComb, by R. W. Rayne, his attorney in fact, before Edgar Grima, notary public.

TAMELIA R. COOK.

Witness:
SAM'L S. FISHER.

Recorded March 30, 1872. C. E. L.

(3.) McComb to American Cotton-tie Co. (D[16], p. 305.)

Know all men by these presents:

Whereas, letters patent of the United States for improvement in metallic ties for cotton bales, and numbered 19490, were granted to Frederic Cook on the second day of March, A. D. 1858, for the term of fourteen years, which letters patent were duly extended by the Commissioner of Patents for the further term of seven years from and after the seventh day of March, A. D. 1872; and, whereas, letters patent of the United States for improvements in metallic bands for baling,

and numbered 23291, were granted to George Brodie on the twenty-second day of March, A. D. 1859, for the term of fourteen years,
81 which letters patent were reissued on the twenty-seventh day of April, 1869, and in such reissued form duly extended by the Commissioner of Patents for the fourth term of seven years from and after the twenty-second day of March, 1873; and

Whereas, by assignment from the said Cook and the said Brodie, respectively, I have become possessed of the sole right, title, and interest in the said several letters patent, and in the inventions to which the same relate, and which it is sought to cover thereby; and

Whereas I have bargained to sell my interest in the said several letters patent and inventions to the "American Cotton-tie Company," a firm having its principal place of business in the city of New Orleans and State of Louisiana, and composed of the following persons, viz, James Jennings McComb, Charles G. Johnson, and Emerson Foote:

Now, therefore, in virtue of the premises, and of the sum of one dollar, good and lawful money, to me in hand paid, the receipt of which is hereby acknowledged, and of other good and valuable considerations, I hereby assign, set over, and transfer to the said firm, the "American Cotton-tie Company," all my right, title, and interest in and to the said several inventions, and in and to the said several letters patent, and any and all reissues, renewals, or extensions thereof; the same to be held and enjoyed by the said firm as fully and completely as they could be held and enjoyed by myself.

Witness my hand this 22d day of June, A. D. 1874.

J. J. McCOMB.

Witnesses:
WM. ANDERTON.
W. E. LACY.

Recorded July 30, 1874.—B. N. B.

(4.) American Cotton-tie Co. to the American Cotton-tie Co., L'd. (S.[20], p. 414.)

Know all men by these presents:

Whereas the American Cotton-tie Company, a firm composed of James Jennings McComb, Charles Garrett Johnson, and Emerson Foote, the said James Jennings McComb being the managing partner thereof, is the owner by mesne assignment of the following letters patent of the United States, viz:

Letters patent granted to Frederick Cook, March 2, 1858, No. 19490, and extended for seven years from March 2, 1872.

Letters patent granted George Brodie, March 22, 1859, No. 23291, reissued April 27, 1869, extended for seven years from March 22, 1873, and again reissued on or about March 25, 1873.

82 Letters patent granted Charles G. Johnson, assignee of Charles Swett, October 23, 1866, No. 59144 (antedated to April 23, 1866), and reissued May 7, 1872, No. 4896; and

(B[15], p. 457.)

Whereas the several members of the said firm, as copartners therein, have heretofore entered into a contract with "The American Cotton-tie Company, Limited," a corporation duly organized under and by virtue of the laws of the United Kingdom of Great Britain and Ireland, and having its principal place of business in Liverpool, England, to sell

assign, transfer, and set over unto the said company all the right, title, and interest which the said firm has in letters patent of the United States pertaining to bale-ties for baling cotton:

Now, therefore, by virtue of the premises, and for good and valuable considerations moving thereto, the said firm, the American Cotton-tie Company, has heretofore bargained and sold, and does hereby sell, assign, transfer, and set over unto said company, "The American Cotton-tie Company, Limited," its successors and assigns, all the right, title, and interest of the said firm in and to the several letters patent hereinbefore named, and in and to the inventions to which they respectively relate, together with all reissues, renewals, and extensions thereof, and all claims and demands for profits and damages by reason of any infringement of the said patents, or any of them, the same to be held and enjoyed by the said company, its successors, and assigns, for their own use and behoof, to the full end of the term or terms for which the said letters patent are or may be granted, as fully as the said firm could have held the same if this assignment had not been made.

Signed and executed this 1st day of March, A. D. 1876.

AMERICAN COTTON-TIE COMPANY,
J. J. McCOMB, *Managing Partner.*

Recorded Sept. 12, 1876.—F. C. T.

83 *Brodie assignments.*

DEPARTMENT OF THE INTERIOR.

U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of assignment, found therein relating to letters patent No. 23291, granted George Brodie, March 22, 1859, "metallic bands for baling."

In testimony whereof I, R. H. Duell, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this first day of December, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

[L. S.] R. H. DUELL, *Commissioner.*

(1.) Brodie to McComb. (T.[16] page 1.)

This agreement made this day between George Brodie, of Arkansas, and James Jennings McComb, of Liverpool, England, witnesseth:

That for and in consideration of one dollar and other valuable consideration to him in hand paid, the said George Brodie hereby sells, assigns, and conveys unto the said James Jennings McComb all the right, title, and interest of the said George Brodie in and to letters patent of the United States, and the inventions covered thereby, for "improvment in metallic bands for baling," granted to said George Brodie March 22, 1859, reissued April 27, 1869, for the full term of said letters patent, and of any reissue, renewal, and extension thereof, the same to be held and enjoyed by the said James Jennings McComb, to the full and of such original and extended term, as fully and entirely as the same would have been held and enjoyed by the said Brodie, if this assignment and sale had not been made; and the said George Brodie, for himself, his heirs, administrators and executors, hereby

covenants with the said James Jennings McComb, his heirs and assigns, that he has the power to make this conveyance, and that he will warrant and defend the title herein conveyed against any act of himself or any one claiming under him.

And the said James Jennings McComb hereby covenants that if the Supreme Court of the United States, in any suit which may properly come before it, shall decide that the third claim of Frederic Cook, or any claim of like import that may be substituted therefor in a reissue,
84 covers only the device of Cook, and does not cover the open slot in such ties as that of said Brodie, the Eureka tie of Geo. N. Beard, and others of similar construction; then and in that event the said McComb agrees to license the said George Brodie, from the date of such decision, to use the inventions set forth in the patent hereby conveyed, subject, however, to the claims of said McComb, or of any other person, under all letters patent except that of Frederic Cook, dated March 2, 1858, and extended.

Witness the hands of the parties hereto (the said James Jennings McComb, by his attorney in fact) this 19th day of March, 1873.

Witness:

GEORGE BRODIE.
JAMES JENNINGS McCOMB,
By SAMUEL S. FISHER,
His Attorney in Fact.

Recorded March 20, 1863.—L. F. S.

(2.) McComb to American Cotton-tie Co. (D[18], p. 305.)

Know all men by these presents:

Whereas letters patent of the United States for improvement in metallic ties for cotton-bales, and numbered 19490, were granted to Frederic Cook on the second day of March, A. D. 1858, for the term of fourteen years, which letters patent were duly extended by the Commissioner of Patents for the further term of seven years from and after the seventh day of March, A. D. 1872; and whereas letters patent of the United States for improvements in metallic bands for baling, and numbered 23291, were granted to George Brodie on the twenty-second day of March, A. D. 1859, for the term of fourteen years, which letters patent were reissued on the twenty-seventh day of April, 1869, and in such reissued form duly extended by the Commissioner of Patents for the fourth term of seven years from and after the twenty-second day of March, 1873; and

Whereas by assignment from the said Cook and the said Brodie, respectively, I have become possessed of the sole right, title, and interest in the said several letters patent, and in the inventions to which the same relate, and which it is sought to cover thereby; and

Whereas I have bargained to sell my interest in the said several letters patent and inventions to the "American Cotton-tie Company," a firm having its principal place of business in the city of New Orleans and State of Louisiana, and composed of the following persons, viz, James Jennings McComb, Charles G. Johnson, and Emerson Foote:

85 Now, therefore, in virtue of the premises, and of the sum of one dollar, good and lawful money, to me in hand paid, the receipt of which is hereby acknowledged, and of other good and valuable considerations, I hereby assign, set over, and transfer to the said

firm, the "American Cotton-tie Company," all my right, title, and interest in and to the said several inventions, and in and to the said several letters patent, and any and all reissues, renewals, or extensions thereof; the same to be held and enjoyed by the said firm as fully and completely as they could be held and enjoyed by myself.

Witness my hand this 22d day of June, A. D. 1874.

J. J. McCOMB.

Witness:
WM. ANDERSON,
W. E. LACY.

Recorded July 30, 1874.—B. N. B.

(3.) American Cotton-tie Co. to the American Cotton-tie Co., Ld.
(S[20], p. 414.)

Know all men by these presents:

Whereas The American Cotton-tie Company, a firm composed of James Jenning McComb, Charles Garrett Johnson, and Emerson Foote, the said James Jennings McComb being the managing partner thereof, is the owner by mesne assignment of the following letters patent of the United States, viz:

Letters patent granted to Frederic Cook, March 2, 1858, No. 19490, and extended for seven years from March 2, 1872;

Letters patent granted George Brodie, March 22, 1859, No. 23291, reissued April 27, 1869, extended for seven years from March 22, 1873, and again reissued on or about March 25, 1873;

Letters patent granted Charles G. Johnson, assignee of Charles Swett, October 23, 1866, No. 59144 (antedated to April 23d, 1866), and reissued May 7, 1872, No. 4896; and,

(B[15], p. 457.)

Whereas the several members of the said firm, as copartners therein, have heretofore entered into a contract with "The American Cotton-tie Company, Limited," a corporation duly organized under and by virtue of the laws of the United Kingdom of Great Britain and Ireland, and having its principal place of business in Liverpool, England, to sell, assign, transfer, and *and* set over unto the said company all the right, title, and interest which the said firm has in letters patent of the United States pertaining to bale-ties for baling cotton:

86 Now, therefore, by virtue of the premises, and for good and valuable considerations moving thereto, the said firm, the American Cotton-tie Company, has heretofore bargained and sold, and does hereby sell, assign, transfer, and set over unto said company, "The American Cotton-tie Company, Limited," its successors and assigns, all the right, title, and interest of the said firm in and to the several letters patent hereinbefore named, and in and to the inventions to which they respectively relate, together with all reissues, renewals, and extensions thereof, and all claims and demands for profits and damages by reason of any infringement of the said patents or any of them, the same to be held and enjoyed by the said company, its successors and assigns, for their own use and behoof, to the full end of the term or terms for which the said letters patent are or may be granted, as

fully as the said firm could have held the same if this assignment had not been made.

Signed and executed this 1st day of March, A. D. 1876.

AMERICAN COTTON-TIE COMPANY,
J. J. McCOMB, *Managing Partner.*

Recorded Sept. 12, 1876.—F. C. T.

McComb assignments.

DEPARTMENT OF THE INTERIOR.

U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of assignments found therein relating to letters patent No. 31252, granted to James J. McComb, January 29, 1861, "Iron ties for cotton-bales."

In testimony whereof I, R. H. Duell, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-ninth day of November, in the year of our Lord one
87 thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

[L. S.] R. H. DUELL, *Commissioner.*

(1.) McComb to Sturdivant. (E[6], p. 114.)

Whereas, I, James Jennings McComb, of New Orleans, in the parish of Orleans and State of Louisiana, did obtain letters patent of the United States for certain improvements in the iron tie for cotton-bales, which letters patent bear date the twenty-ninth day of January, 1861, and which tie will now be known as the Arrow tie.

And whereas Addison C. Sturdivant, of New Orleans, as aforesaid, has agreed to purchase from me all the right, title, and interest which I have, or may have, in and to the said invention, in consequence of the grant of letters patent therefor, and has paid me, the said James Jennings McComb, the sum of five hundred dollars, the receipt of which is hereby acknowledged:

Now, this indenture witnesseth, that for and in consideration of the said sum to be paid, I have assigned, transferred, and do hereby assign and transfer to the said Addison C. Sturdivant the full and exclusive right to all the improvements made by me, as fully set forth and described in the specification which I have prepared and executed preparatory to the obtaining of letters patent therefor.

The same may be held and enjoyed by the said Addison C. Sturdivant, for his own own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal this thirty-first day of January, 1861.

JAMES J. McCOMB.

(In duplicate.)

Witness:

NATHANIEL MEEHADO, Jr.

Acknowledged before me this 30th January, 1861.

[SEAL.] J. WOOD BREEDLOVE,
Not. Pub.

Received and recorded March 9, 186 .

88 (2.) Sturdevant to Mary F. McComb. (F[14], p. 226.)

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this nineteeth day of April, in the of our Lord one thousand eight hundred and sixty-one, and of the Independence of the United States of America the eighty-fifth,

Before me, Edward Barnett, a notary public in and for the city and parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, personally came and appeared Addison C. Sturdevant, of this city, who declared that, in consideration of his love and affection for Mistress Mary Frances Rayne, wife of James Jennings McComb, the sister of his wife, and also for and in consideration of the sum of one thousand dollars in ready money to him paid by R. W. Rayne, father of the said Mrs. McComb, and as a donation to her, he has given, granted, and transferred, and does, by these presents, give, grant, confirm, and transfer unto the said Mrs. McComb, here present with her said husband, and by him authorized and assisted, accepting for herself, her heirs and assigns, all and singular, his rights, title, interest, ownership, claim, and demand of, in, and to two several letters patent of the United States of America for certain improvements in iron tie of metallic bands for cotton-bales, which letters patent bear date respectively the second of March, eighteen hundred and fifty-eight, and twenty-ninth of January, eighteen hundred and sixty-one. The former, being known as the "Cook tie," was acquired by the said Sturdevant from Frederic Cook as per act under private signature, dated at New Orleans, the twenty-ninth day of March, one thousand eight hundred and sixty-one, duly acknowledged on the same day before W. L. Poole, notary public in this city, and the other, being known as the "Arrow tie," was acquired by him from James J. McComb, by act also under private signature, dated at New Orleans, the thirty-first of January, eighteen hundred and sixty-one, and on the same day duly acknowledged before J. W. Breedlove, a notary public in this city:

To have and to hold the full and exclusive rights secured by and under the aforesaid patents unto the said Mrs. McComb, to be held and enjoyed by her, her heirs and assigns, for her own use and behoof, and for the use of her legal representatives, to the full end and term for which said letters patent are or may be granted, as fully and entirely as the same could have been held by him, the said Sturdevant, had this donation and transfer not been made.

And the said Mrs. McComb, authorized and assisted as aforesaid, does hereby also accept the donation of one thousand dollars made to her by her said father, who is here present for that purpose, which said

sum of one thousand dollars was paid in ready money by her said father to the said A. C. Sturdevant, in presence of the undersigned notary and witnesses, the receipt of which he hereby acknowledges.

89 Done and passed in my office at New Orleans aforesaid, the day, month, and year aforesaid, in presence of Marcel T. Dueros and Antoine Conrad, witnesses, residing in this city, who have signed their names with the said appearers and me, notary.

A. C. STURDEVANT,
MARY F. McCOMB,
R. W. RAYNE,
J. JENNINGS McCOMB,
M. T. DUEROS,
A. CONRAD.
EDWARD BARNETT,
Notary Public.

[5-cent internal revenue stamp, cancelled.]

NEW ORLEANS, *April* 21, 1861.

A true copy of the original.

EDWARD BARNETT,
Notary Public.

Present signature of Edw. Barnett, notary, before whom above act was passed, New Orleans, 6th May, 1871.

EDW. BARNETT, *Not. Pub.*

STATE OF LOUISIANA,
Office of Secretary of State:

I hereby certify that Edward Barnett is, and was at the date of the annexed instrument, notary public in and for the parish of Orleans, in said State, and his attestation thereof is in accordance with law, and his signature thereto is genuine.

Given under my hand and the seal of the State this sixth day of May, 1871, and of the Independence of the United States of America the ninety-fifth.

[L. S.]

GEO. E. BOVEE,
Secretary of State.

Recorded May 11, 1871.—H. S.

(3.) McComb to The American Cotton-tie Co., L'd.—(K[20], p. 289.)

Whereas letters patent of the United States for "improved cotton-bale tie" were granted to James J. McComb, dated January 29, 1861, and numbered 31252; and

Whereas Mary Frances McComb, by deed of assignment dated April 19, 1861, became, and at the time of her death was, the owner of a certain interest in the said letters patent; and

Whereas the said Mary Frances McComb died intestate on or about the 9th day of December, 1874; and

90 Whereas James J. McComb has been duly appointed administrator of the estate of the said Mary Frances McComb, deceased:

Now, then, in consideration of one dollar to me in hand paid, the receipt of which is hereby acknowledged, and of the covenants and agreements contained in a certain contract existing between myself and The American Cotton-tie Company, Limited, a corporation duly

registered under the laws of the United Kingdom of Great Britain and Ireland, and having its principal place of business in Liverpool, England, which said contract was duly executed by me on or about the 25th day of February, A. D. 1876, I, James J. McComb, for myself individually, and as administrator of the estate of Mary Frances McComb as aforesaid, have sold and assigned and set over, and do hereby sell, assign, and set over unto the said The American Cotton-tie Company, its successors and assigns, all my right, title, and interest, and all the right, title, and interest which the estate of the said Mary Frances McComb now has, or which the said Mary Frances McComb at the time of her death had, in and to the said letters patent, and in and to the invention to which they relate, with all reissue, extensions, and renewals of the same, and all claims and demands whatsoever for damages or profits which have accrued since the twenty-first day of March, A. D. 1873, or infringements of the said letters patent, or for the use of the invention to which they relate, without license therefor, the same to be held and enjoyed by the said The American Cotton-tie Company, Limited, its successors and assigns, for their own use and behoof, to the full end of the term for which the said letters patent are or may be granted, as fully I or the estate of the said Mary Frances McComb, or the said Mary Frances McComb, at the time of her death, could have held the same if this assignment had not been made.

In witness whereof I have hereto set my hand and seal this 1st day of March, 1876.

J. J. McCOMB.
J. J. McCOMB,
Administrator.

Recorded July 1, 1876.—F. C. T.

91 *McComb letters of administration.*

The people of the State of New York to James J. McComb, of New Orleans, in the State of Louisiana, husband of Mary Frances McComb, late of the parish of Orleans, State of Louisiana, deceased, send greeting:

Whereas said Mary F. McComb lately departed this life intestate, not being at or immediately previous to her death an inhabitant of the county of New York, but leaving assets therein, by means whereof the ordering and granting administration of all and singular the goods, chattels, and credits, whereof the said intestate died possessed in the State of New York, and also the auditing, allowing, and final discharging the amount thereof, doth appertain unto us; and we being desirous that the goods, chattels, and the credits of the said intestate may be well and faithfully administered, applied, and disposed of, do grant unto you, the said James J. McComb, full power, by these presents, to administer and faithfully dispose of all and singular the said goods, chattels, and the credits; ask, demand, recover, and receive the debts which, unto the said intestate, whilst living and at the time of her death, did belong; and to pay the debts which the said intestate did owe, as far as such goods, chattels, and credits will thereunto extend and the law require; hereby requiring you to make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, and credits of the said intestate within a reasonable time, and return a duplicate thereof to our surrogate of the county of New York within three months from the date of these presents; and if further personal property or assets of any kind, not mentioned in any inven-

tory that shall have been so made, shall come to your possession or knowledge, to make or cause to be made in like manner a true and perfect inventory thereof, and return the same within two months
92 after the discovery thereof, and also to render a just and true account of administration when thereunto required; and we do by these presents depute, constitute, and appoint you, the said James J. McComb, administrator of all and singular the goods, chattels, and credits of the said Mary F. McComb, deceased.

In testimony whereof we have caused the seal of office of the surrogate of said county to be hereunto affixed. Witness Robert C. Hutchings, esq., surrogate of said county, at the city of New York, on the 7th day of October, in the year of our Lord one thousand eight hundred and seventy-five.

[L. S.] ROBERT C. HUTCHINGS,
Surrogate.

STATE AND COUNTY OF NEW YORK,
Surrogate's Office, ss:

I, Peter V. Burtsell, clerk to the surrogate's court of said county, do hereby certify that I have compared the foregoing copy of the letters of administration granted upon the estate of Mary F. McComb, deceased, with the original record thereof, now remaining in this office, and have found the same to be a correct transcript therefrom, and of the whole of such original record.

In testimony whereof I have hereunto set my hand and affixed the seal of office of said surrogate this 5th day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

[L. S.] PETER V. BURTSELL,
Clerk to the Surrogate's Court.

STATE AND COUNTY OF NEW YORK,
Surrogate's Office, ss:

I, Delano C. Calvin, surrogate of said county, and presiding magistrate of the surrogate's court, do hereby certify that the foregoing exemplification of the letters of administration granted upon
93 the estate of Mary F. McComb, deceased, is authenticated in due form and by the proper officer.

In testimony whereof I have hereunto set my hand and affixed the seal of the surrogate's court this 5th day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

[L. S.] D. C. CALVIN, *Surrogate.*

Certificate of registration.

I, the undersigned, consul of the United States of America for the port of Liverpool and its dependencies, do certify and make known to whom these presents shall come that Henry C. Duncan, whose true signature and notarial seal are subscribed and affixed to the annexed certificate, is a notary public, duly authorized, admitted, and sworn, residing in Liverpool, to whose acts as such full faith and credit are due.

Given under my hand and seal of office, at Liverpool, this first day of September, and year of our Lord one thousand eight hundred and seventy-six.

[L. S.] LUCIUS FAIRCHILD,
U. S. Consul.

94 I, Henry Cairncross Duncan, notary public, duly authorized, admitted, and sworn, residing and practicing in Liverpool, in the county of Lancaster, in the United Kingdom of Great Britain and Ireland, do hereby certify that the certificate hereunto annexed is the certificate of incorporation of the American Cotton-tie Company, Limited, and that J. Michael, the person by whom the said certificate is signed, is assistant register of joint stock companies in London, and the proper person to sign the same.

In testimony whereof I have hereunto subscribed my name and affixed my seal of office, at Liverpool aforesaid, this first day of September, in the year of our Lord one thousand eight hundred and seventy-six.

[L. S.] HENRY C. DUNCAN,
Notary Public, Liverpool.

Certificate of the incorporation of a company.

I hereby certify that The American Cotton-tie Company, Limited, was incorporated under the companies act, 1862, as a limited company, on the thirty-first day of December, one thousand eight hundred and seventy-five.

Given under my hand at London this thirty-first day of August, one thousand eight hundred and seventy-six.

J. MICHAEL,
Assistant Registrar of Joint Stock Companies.

Companies act, 1862, sec. 174.

95 *Record of Chapman suit, New Orleans.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit, district of Louisiana.

Bill of complaint.—Filed August 2d, 1876.

THE AMERICAN COTTON-TIE COMPANY, Limited, James J. McComb, administrator of the estate of Mary F. McComb, and James J. McComb, Charles G. Johnsen, and Emerson Foote,
vs.
CHARLES W. CHAPMAN. } In equity.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The American Cotton-tie Company, Limited, a joint stock company duly and legally organized under the laws of the United Kingdom of Great Britain and Ireland, and having its principal places of business in Liverpool, England, and in New Orleans, in the State of Louisiana; James J. McComb, a citizen of the United States, and at present residing at Liverpool, England, administrator of the estate of Mary F. McComb, deceased, late of Liverpool, and the said James J. McComb, Charles G. Johnsen, a citi-

zen of the State of Louisiana, and residing in New Orleans, in said State, and Emerson Foote, a citizen of the State of New York, and residing in the city of New York, in said State, each in his own behalf, and as a copartner in the firm of The American Cotton-tie Company, a firm having its principal place of business at Liverpool, England,
96 and in New Orleans, in the State of Louisiana, bring this their bill of complaint against Charles W. Chapman, an alien and a subject of the Queen of Great Britain and Ireland.

And thereupon your orators complain and say:

That prior to the 2d day of March, A. D. 1858, one Frederic Cook was the original and first inventor of a new and useful improvement in metallic ties for cotton-bales, which invention is fully described in the letters patent hereinafter mentioned, and which had not been known or used before the invention or discovery thereof by the said Frederic Cook, and which, at the time of his application for a patent, as hereinafter mentioned, had not been in public use or on sale with his consent or allowance.

And your orators further show unto your honors that Frederic Cook, being so as aforesaid the first inventor and discoverer of said improvement, and being also a citizen of the United States, did, on the 2d day of March, 1858, upon due application therefor, obtain letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, and numbered 19490, whereby there was granted and secured to the said Cook, his heirs, administrators, or assigns, or intended so to be, for the term of fourteen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement as set forth in said letters patent, which are of record in the Patent Office of the United States, and which, or a duly certified copy of which, your orators are ready here in court to produce. Grant of Cook patent, March 2, 1858.

And your orators further show unto your honors that on the 31st day of January, 1872, the said Frederic Cook filed in the said Patent Office his disclaimer to so much of the invention set forth in the said letters patent as was
97 embraced in the first claim thereof, which was in the following words to wit: Disclaimer in Cook patent.

"What I claim as my invention and desire to secure by letters patent, is:

"The friction clasp or buckle, for attaching the ends of iron ties or hoops for fastening cotton-bales and other packages, so that the ties are prevented slipping by the friction against a certain portion of the buckle."

Which disclaimer was duly filed and recorded according to law, and became a part of the specification of the patent to the extent of the interest possessed by the said Frederic Cook and those claiming under him after the date of record

of the same, as by said disclaimer, or a duly certified copy thereof ready here in court to be produced, will appear.

Adjudications under Cook patten.

Brodie suit.

And your orators further show unto your honors that during the original term of said letters patent an action at law was brought in the circuit court of the United States for the district of Louisiana, by Mary F. McComb and James J. McComb, against one George Brodie, to recover damages for the alleged infringement of said letters patent, which cause came on to be tried at the November term, 1871, of said court, to wit, in March, 1872; that much testimony was introduced on both sides, and that the defendant denied the patentability of the invention described in the third claim, and the scope thereof as claimed by the plaintiffs, and the infringement thereof by the use by him of a square link having one opening or mortise, with a slot cut through one bar of clasp leading into said mortise for the purpose of inserting the hoop in a bent condition sidewise instead of endwise. Whereupon, after trial of four days, the jury rendered a verdict for the plaintiffs.

Equity suits in Louisiana.

And your orators further show unto your honors that afterwards, to wit, in March, 1872, bills in equity were filed by the said Frederic Cook and your orator James J. McComb, in the circuit court of the United States for
98 the district of Louisiana, against John S. Wallis, William Chambers, and others—among them, Andrew, William, and Hugh Stewart, and Andrew Gwynne—who were making and selling metallic ties for cotton-bales, known as the "Wallis," "Alligator," "Dunn," "Eureka," and "Gooch" ties, praying for an injunction and account; that motions were made in all of said cases for provisional injunctions; that the defendants appeared by counsel and resisted said motions, and filed numerous affidavits and exhibits, alleging, among other things, that the said Frederic Cook was not the original and first inventor of the improvement specified in the third claim of invention in said letters patent, but that said improvement was to be found in an open link for trace-chains, known and used long prior to the invention of said Cook, and in a buckle patented to George Hall, in England, in 1801, and in one described in a provisional specification filed by one Frederick J. Pilliner, in England, in 1856, and that the defendants had received letters patent for the ties made and sold by them, and that said ties did not infringe the letters patent granted to said Cook. And, hearing the arguments of counsel, and upon full consideration, the court found all the issues in favor of the complainants, and granted peremptory injunctions against all of the said defendants.

McComb vs. Ira Beard. New York.

And your orators further show unto your honors that on or about the 23d day of October, 1871, a bill of complaint was filed in the circuit court of the United States for the southern district of New York, by Mary F. McComb, the then owner by mesne assignment of said letters patent granted to Frederic Cook, as aforesaid, against one Ira Beard, alleging, among other things, that the said Ira Beard had infringed, and was infringing, upon said letters patent by selling and exposing for sale metallic ties for

cotton-bales made according to and embodying the invention described and claimed therein, and praying for an injunction and account. And the said defendant made
99 answer thereto, denying among other things that said Frederic Cook was the first and original inventor of the improvements in ties for cotton-bales described in letters patent No. 19490, so as aforesaid granted to him, averring that long prior to his alleged invention thereof the same was described in the letters patent granted in Great Britain to George Hall, dated November 28, 1801, No. 2561, for "elastic fastenings for shoes;" and the said defendant further denied that he had made, used, or sold any ties for cotton-bales substantially like the ties described and claimed in the said letters patent or any equivalent thereof.

And the said cause came on to a final hearing at the October term of said court, to wit, in December, 1872, upon the proof of the respective parties, among which were the affidavits, proofs, and documents offered in evidence, pro and con, at a hearing in New Orleans, before Mr. Justice Bradley and Judge Woods, upon a motion for the dissolution of an injunction granted in the suit hereinbefore mentioned of Frederic Cook and James J. McComb against Andrew, William, and Hugh Stewart, and Andrew Gwynne, restraining the sales of ties of cotton-bales known as "Eureka ties;" and said cause was fully and elaborately argued by counsel for the respective parties, and was held under advisement by the said court until January 9, 1873, when the judgment of the court was pronounced. And the said court decided among other things that the said letters patent so as aforesaid granted to Frederic Cook were valid in law; that prior to March 2, 1858, the said Frederic Cook was the true, original, and first inventor of a certain new and useful improvement, to wit, "An improvement in metallic ties for cotton-bales;" that letters patent of the United States were duly issued therefor to the said Cook, bearing date March 2, 1858, and numbered 19490; that the said Ira Beard had infringed so much of said letters patent as is set forth in and claimed in the third claim of invention, by having sold metallic ties for cotton-bales
100 having and containing a slot cut through one bar of clasp, which enables the end of the tie or hoop to be slipped sidewise underneath the bar in clasp, so as to effect the fastening with greater rapidity than by passing the end of the tie through endwise, said tie so sold by said defendant being similar to the one described in letters patent for an improvement in cotton-bale ties granted to George N. Beard, December 27, 1870; and that said complainant was entitled to the costs of said suit, and to an account of the profits derived by the defendant from said infringement, as well as the damages sustained by the complainant thereby.

And your orators further show unto your honors that in the circuit court of the United States for the western district of Tennessee bills of complaint were filed by Mary F. McComb and your orator James J. McComb against George N. Beard, and by your orator James J. Mc-

McComb vs. G. N. Beard. W. D. of Ten.

Comb, individually, against said George N. Beard; and that said defendant in said suits made like answer to each of said bills of complaint, admitting the sale of metallic ties for cotton-bales of the kind known to the trade as the "Eureka tie," but denying that the same infringed upon letters patent granted as aforesaid to said Cook, and denying also that the said Frederic Cook was the original and first inventor of the improvement in said letters patent described and claimed, but averring among other things that prior to his invention thereof the same was described and patented in the English letters patent aforesaid granted to George Hall, and in certain English letters patent granted to one T. B. Taft, February 1, 1847, and numbered 11554. And afterward, at the May term of said court, in the year 1873, said cause was brought to a final hearing before his honor Judge Emmons, and was argued by counsel for the respective parties, and thereupon, on consideration thereof, the said court adjudged and decreed that the said letters patent granted to Frederic Cook as aforesaid were valid in law; that the said Frederic
101 Cook was the true, original, and first inventor of the improvements therein described and claimed; that the same were duly assigned to said complainants; and that the said defendant, George N. Beard, had infringed said letters patent by having made and sold the said "Eureka tie."

Extension of Cook patent.

And your orators further show unto your honors that on or about the 17th day of February, 1872, the said Frederic Cook having made application for the extension of the term of the said letters patent granted him as aforesaid on the 2d day of March, 1858, for a further period of seven years from and after the 2d day of March, 1872, and having fully and in all respects complied with the various requirements of law in such case made and provided, and after full examination by the Commissioner of Patents, the extension thereof was duly granted, and the said letters patent were, by the certificate of said Commissioner, declared to have the same effect as if originally granted for twenty-one years, as by the production of said certificate of extension, or a duly certified copy thereof, ready here in court to be produced, will fully appear.

Assignment to J. J. McComb.

And your orators further show unto your honors that afterward, to wit, on or about the 22d day of March, 1872, the said Frederic Cook, by an assignment in writing of that date, sold, assigned, and transferred unto your orator James J. McComb all his, said Cook's, right, title, and interest in and to said letters patent and invention, which said assignment was duly recorded in the Patent Office of the United States, as by said assignment, or a duly certified copy thereof ready in court to be produced, will fully and at large appear; and that, by virtue of the premises, your said orator James J. McComb became possessed of all the rights and privileges granted and secured, or intended to be granted and secured, in and by the said letters patent.

And your orators show unto your honors that
102 prior to the 22d day of March, 1859, one George Brodie was the original and first inventor of certain new and useful improvements in metallic bands for baling, fully set forth and described in the letters patent hereinafter mentioned, and which had not been known or used before the invention or discovery thereof by the said Brodie, and which, at the time of his application for a patent, as hereinafter mentioned, had not been in public use or on sale with his consent or allowance.

Grant of Brodie patent, March 22, 1859.

And your orators further show unto your honors that the said George Brodie, being so as aforesaid the first inventor and discoverer of said improvements, and being also a citizen of the United States, did, on the said 22d day of March, 1859, upon due application therefor, obtain letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, whereby there was granted and secured to the said Brodie, his heirs, administrators, or assigns, or intended so to be, for the term of fourteen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvements as set forth in said letters patent, which are of record in the Patent Office of the United States, and which, or a duly certified copy thereof, your orators are ready here in court to produce.

Reissue of Brodie patent, April 27, 1869.

And your orators further show unto your honors that the said George Brodie, having for good and lawful cause surrendered said letters patent to the Commissioner of Patents, and having made due application therefor, and having in all things complied with the acts of Congress in such case made and provided, did, on the 27th day of April, A. D. 1869, obtain certain new letters patent
103 for the same invention, being a reissue of said last-named original patent, and numbered 3405, which reissued letters patent were issued in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and bearing date the day and year aforesaid, as by the said last-mentioned letters patent, or a duly certified copy thereof, ready here in court to be produced, will appear.

Assignment of Brodie patent to McComb.

And your orators further show unto your honors that afterward, to wit, on or about the 19th day of March, 1873, the said George Brodie, by an assignment in writing of that date, sold, assigned, and transferred unto your orator James J. McComb all his, said Brodie's, right, title, and interest in and to said letters patent and invention for the full term of said patent, and of any reissue, renewal, and extension thereof, which said assignment was duly recorded in the Patent Office of the United States, as by said assign-

ment, or a duly certified copy thereof, ready in court to be produced, will fully and at large appear; and that, by virtue of the premises, your said orator James J. McComb became possessed of all the rights and privileges granted and secured or intended to be granted and secured in and by the said letters patent.

Extension of Brodie patent.

And your orators further show unto your honors that on or about the 21st day of March, 1873, the said George Brodie, having made application for the extension of the term of the said last-mentioned letters patent granted him, as aforesaid, for a further period of seven years from and after the 22d day of March, 1873, and having fully and in all respects complied with the various requirements of law in such case made or provided, and after full examination by the Commissioner of Patents, the extension thereof was duly granted, and said letters patent were, by the certificate of said Commissioner, declared to have the same effect as if originally granted for twenty-one years, as by the production of said certificate of extension, or a duly certified copy thereof, ready here in court to be pro-
104 duced, will fully appear; which said extension, by virtue of the assignment last named, enured to the benefit of your orator James J. McComb, his heirs or assigns.

Reissue of Brodie patent, March 25, 1873.

And your orators further show unto your honors that afterward the said George Brodie having, for good and lawful cause, and with the consent and approbation of your orator James J. McComb, surrendered said last-named letters patent to the Commissioner of Patents, and having made due application therefor, and having in all things complied with the acts of Congress in such case made and provided, certain new letters patent, on the same invention, and numbered 5333, were granted the said James J. McComb, as assignee of the said Brodie, his heirs or assigns, on the 25th day of March, 1873, which reissued letters patent were issued in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and bearing date the day and year aforesaid, as by the said last-mentioned letters patent, or a duly certified copy thereof, ready here in court to be produced, will fully appear.

Assignment of Cook and Brodie patents to A. C. T. Co.

And your orators further show unto your honors that on or about the 21st of March, 1873, your orators, James J. McComb, Charles G. Johnsen, and Emerson Foote, formed a special copartnership, under the name and style of The American Cotton-tie Company, for the manufacturing and selling of metallic bale-ties, and that in pursuance of the provisions of the copartnership contract, and for and in consideration of the mutual covenants and agreements therein contained, your orator James J. McComb did, among other things, on or about the date last named, sell, assign, and set over unto the said firm all his right, title, and interest in and to the letters patent granted to the said Frederic Cook and extended as aforesaid, and in and to

the letters patent granted to the said George Brodie
105 and reissued and extended as aforesaid, and in and to the respective inventions covered thereby; and that by virtue of the premises your orators, the said James J. McComb, Charles G. Johnsen, and Emerson Foote, members of the firm of the American Cotton-tie Company aforesaid, became possessed of all the rights and privileges granted and secured or intended to be granted and secured by the said several letters patent.

Grant of McComb patent.

And your orators further show unto your honors that prior to the 29th day of January, 1861, your orator James J. McComb was the original and first inventor of a certain new and useful improvement in iron ties for cotton-bales, fully set forth and described in the letters patent hereinafter mentioned, and which had not been known or used before the invention or discovery thereof by said McComb.

And your orators further show unto your honors that the said James J. McComb, being so as aforesaid the first inventor and discoverer of said improvement, and being also a citizen of the United States, did, on the 29th day of January, 1861, upon due application therefor, obtain letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last named, and numbered 31252, whereby there was granted and secured to the said James J. McComb, his heirs, administrators, or assigns, or intended so to be, for the term of fourteen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, as set forth in said letters patent, which are of record in the Patent Office of the United States, and which, or a duly certified copy of which, your orators are ready here in court to produce.

106 And your orators further show that in the year 1861, by mesne assignment in writing, one Mary F. McComb became possessed of the entire right, title, and interest in and to the last-named letters patent and invention, for the full term of said patent, including any reissue, renewal, and extension thereof; that the said Mary F. McComb died intestate on or about the 9th day of December 1874; and that your orator James J. McComb was thereafter duly appointed administrator of the estate of the said Mary F. McComb, deceased.

Assignment of McComb patent to Mary F. McComb.

Extension of McComb patent.

And your orators further show that the term of the last-named letters patent, upon due application made, and after due proceedings had, was extended by the Commissioner of Patents, in due conformity to law, for the further period of seven years from and after the 29th day of January, 1875; and the said letters patent were, by the certificate of the said Commissioner, declared to have the same effect as if originally granted for twenty-one years, as by reference to the original certificate of extension, or a duly

certified copy thereof, ready here in court to be produced, will fully appear.

Organization of the Amer. Cotton-tie Co., Limited.

And your orators further show that the corporation complainant The American Cotton-tie Company, Limited, was duly and legally organized on or about the 31st day of December, 1875, by the proper registration of a memorandum of association, and of articles of association, and the performance of all other necessary acts required by the laws of the United Kingdom of Great Britain and Ireland in such case made and provided; that the said corporation was organized with the consent and approval, and by the procurement of your orators, James J. McComb, Charles G. Johnsen, and Emerson Foote, members of the firm of the aforesaid American Cotton-tie Company, and for the express purpose, among other things, of buying from the said firm their good-will in the business of making and selling metallic bale-ties and all the patents and patent rights and privileges pertaining to said business, then owned by the said firm, and also of buying the aforesaid letters patent No. 31252, granted to your orator James J. McComb, January 29, 1861, and at the time of the organization of the corporation complainant, as aforesaid, held by the said McComb as administrator of the estate of Mary F. McComb, deceased; that upon the organization of the said corporation, and in pursuance of the purposes of its creation, the several letters patent hereinbefore named were, for good and valuable considerations, sold, assigned, set over, and transferred to the said corporation, together with all reissues, renewals, and extensions of the same, and all claims and demands whatsoever for damages and profits arising from the prior use, without license, of the inventions covered by said patents; and that, by virtue of the premises, your orator The American Cotton-tie Company, Limited, became, and now is, possessed of the sole and exclusive right, title, and interest in and to the several letters patent, and of all the rights and privileges granted and secured or intended to be granted and secured thereby.

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Assignment of patents to the A. C. T. Co., Limited.

Value and public use of the patented inventions.

And your orators further show that the inventions covered by the several letters patent hereinbefore named and on which this suit is brought are of very great value and utility, and have been very extensively introduced into use to the great benefit and advantage of the public; in fact your orators fully believe, and therefore allege the fact to be, that it is owing almost wholly to the merits of the said inventions that the metallic tie for baling cotton has become popularized, so that at the present time metallic ties have wholly superceded the use of rope for this purpose.

Diligence of complainants in working the inventions.

And your orators further show unto your honors that since they respectively became the owners of the said letters patent as aforesaid, and have had the right to use the inventions covered thereby, they have invested large sums of money, and been to great trouble in and about the said inventions, in making the same profitable to themselves and useful to the public; that they have entered largely into the business of making and selling

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iron cotton-ties embodying said inventions; that they have always used for this purpose a superior quality of iron, and have at all times been ready to supply the market therewith at reasonable rates.

Acquiescence of the public.

And your orators further show that the public have generally acknowledged and acquiesced in the rights of your orators as secured by the several patents aforesaid; and they further say that they verily believe that the persons to whom the said several letters patent were originally granted, and who are named therein as the inventors, were the original and first inventors or discoverers of the respective inventions and improvements covered thereby, and that the said several letters patent upon which this suit is brought are, in all respects, good and valid patents.

Patents valid.

Yet the said defendant, well knowing the premises and the rights secured to your orators as aforesaid, but contriving to injure your orators and to deprive them of the benefits and advantages which might, and otherwise would, accrue unto them from said invention, after the issuing of the said several letters patent and after the assignment of the same to your orators as aforesaid, and before the commencement of this suit, and particularly during July, 1876, did, as your orators are informed and believe, without the license or allowance, and against the will of your orators, and in violation of their rights, and in infringement of the aforesaid letters patent, within this district and elsewhere, unlawfully and wrongfully, and in defiance of the rights of your orators, make, construct, use, and vend to others to be used, the said inventions, and did make, construct, use, and vend to others to be used, metallic ties for cotton-bales, each of which ties was made according to, and employed and contained the said several patented inventions, and that the said defendants still continue so to do, and are openly threatening to make the aforesaid metallic
109 ties, and to put the same upon the market in large quantities, and to sell the same.

Infringement, defendants.

All in defiance of the rights acquired by and secured to your orators as aforesaid, and to their great and irreparable loss and injury, and by which they have been and still are being deprived of great gains and profits which they might and otherwise would have obtained, but which have been received and enjoyed, and are being received and enjoyed by the said defendants, by and through their aforesaid unlawful acts and doings.

And your orators further show unto your honors that said defendants have sold large quantities of said metallic ties for cotton-bales, and now have a large quantity on hand, which they are offering for sale, and that they have made and realized large profits and advantages from such sales heretofore made, but to what extent and how much exactly your orators say they do not know, and pray a discovery thereof. And your orators aver that the use of the said inventions by said defendants, and their preparation for and avowed determination to continue the same in disregard and defiance of the rights of your orators, have the

effect to and do encourage and induce others to venture to infringe said patents in disregard of your orators' rights.

Notice to defendants.

And your orators show unto your honors that they have caused notice to be given to said defendants of said infringements, and of the rights of your orators in the premises, and requested them to desist and refrain therefrom; but they have disregarded said notice, and refused to desist from said infringements, and still continue to make and sell metallic ties for cotton-bales made in accordance with the inventions secured to your orators as aforesaid.

And forasmuch as your orators can have no adequate relief except in this court, to the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby
110 prayed, and may, upon their several corporal oaths, according to their best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises, and to all the several matters hereinbefore stated and charged, as fully and particularly as if severally and separately interrogated as to each and every of said matters, and may be compelled to account for and pay to your orators the profits by them acquired, and the damages suffered by your orators from the aforesaid unlawful acts, together with such increase upon the actual damages, according to the provision of law relating thereto, as may seem to this honorable court meet and just; and that the said defendants, their servants, agents, attorneys, and workmen, and each and every of them, may be restrained and enjoined, preliminarily, provisionally, and perpetually, by the order and injunction of this honorable court, from directly or indirectly making, constructing, using, vending, delivering, working, or putting into practice, operation, or use, or in anywise counterfeiting or imitating the said inventions, or any part thereof, or making, using, or selling metallic ties for cotton-bales made in accordance therewith, and that the ties now in their possession may be destroyed, or be delivered up to your orators for that purpose, and that the said defendants may be decreed to pay the costs of this suit, and that your orators may have such further relief or such other relief as to this honorable court shall seem meet, and as shall be agreeable to equity:

May it please your honors to grant unto your orators the writ of injunction, as well preliminary and provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendant, Charles W. Chapman, and his servants, agents, attorneys, and workmen, and each and every of them, as is hereinbefore in that behalf prayed; and may it please your honors to grant unto your orators the writ of subpœna issued out of
111 and under the seal of this honorable court, directed to the said defendant, Charles W. Chapman, commanding him by a certain day and under a certain penalty to be and appear in this honorable court, then and there to answer the premises, and to stand to and abide such order and decree as may be made against him.

And your orators will ever pray, &c.

(Signed) FREDERIC COOK,
Attorney in Fact for Complainants.

(Signed) SINGLETON & BROWNE,
Solicitors.

(Signed) J. R. BECKWITH, *Of Counsel.*

UNITED STATES OF AMERICA,
District of Louisiana, ss:

On the second day of August, 1876, personally appeared Frederic Cook, attorney in fact of the above-named complainants, who, being by me first duly sworn, deposes and says that he has read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) FREDERIC COOK.

Sworn to and subscribed before me this 20th day of August, A. D. 1876.

[SEAL.] (Signed) J. W. GURLEY,
Commissioner U. S. Circuit Court, District of Louisiana.

112 *Subpœna in chancery.—Issued August 20th*, 1876.

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Charles W. Chapman, an alien and a subject of the Queen of Great Britain and Ireland, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1876, then and there to answer a bill in chancery filed against him, wherein The American Cotton-tie Company, Limited, and others are complainants, and said Charles W. Chapman is defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 2d day of August, in the year of our Lord one thousand eight hundred and seventy-six, and the 101st year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
Deputy Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before the first Monday in September, 1876; otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
Deputy Clerk.

113 *Marshal's return.*

Received August 2d, 1876, by the U. S. marshal, and on the 7th day of same month and year served a copy of within subpœna in chancery on Chas. W. Chapman, named herein, by handing the same to him in person.

New Orleans, August 7th, 1876.

(Signed) S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
Deputy Marshal.

Entry in chancery order-book, September rules, 1876.

MONDAY, *September 4th*, 1876.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, *et* als., *vs.* CHARLES W. CHAPMAN. } No. 7930.

The defendant, Charles W. Chapman, has this day, by his solicitors, Horner and Benedict and F. W. Baker, entered his appearance to the complainants' bill.

114 *Notice.—Filed October* 16, 1876.

Circuit court of the United States, district of Louisiana.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, &c., *vs.* CHARLES W. CHAPMAN, OR HORNER & BENEDICT, his solicitors. } In equity.

To the defendant, Charles W. Chapman:

SIR: Please take notice that on Monday, the 13th day of November, A. D. 1876, at 11 o'clock a. m. of said day, or as soon thereafter as counsel can be heard, the complainant in this cause will move the circuit court of the United States for the district of Louisiana, to be held at the city of New Orleans, for an injunction to the extent and effect as prayed for in said bill of complaint; said motion will be based on the bill exhibited on file, and such further proof and exhibits as shall be filed in said cause on or before the 8th day of November, 1876.

(Signed) J. R. BECKWITH,
Solicitor for Complainants.

Marshal's return.

Received October 12th, 1876, by the United States marshal, and on same day, month, and year served a copy of within notice on Charles W. Chapman, named herein, by handing the same to W. S. Benedict, one of his solicitors.

New Orleans, Oct. 12th, 1876.

(Signed) J. R. G. PITKIN,
U. S. Marsha,
By S. W. REED,
Deputy U. S. Marshal.

115 *Petition for restraining order.—Filed Oct. 23d*, 1876.

Circuit court of the United States, district of Louisiana.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al., *vs.* CHARLES W. CHAPMAN. } No. 7930. Petition.

To the honorable the judges of the circuit court for the district of Louisiana:

The petition of the complainants in this cause, with respect, shows

unto your honors that since the filing of the bill in this cause the said defendant has continued the wrongful acts therein complained of, in utter disregard of the rights of the said complainants as secured to them by the said several letters patent set forth in the bill herein. That the matters averred and set forth in the affidavit with the exhibits herewith presented are true; that the fact at this season of the year the present crop of cotton is being baled for market, and the demand for cotton-bale ties limited to the present period of the year, renders the unlawful act of said defendant particularly prejudicial to said complainants, and irreparable in its character.

That said complainants have given due and legal notice of their intention to move the court for a writ of injunction, pendente lite, as appears by a certified copy thereof herewith presented.

Wherefore the premises, the said bill of complaint, and the said affidavit and exhibits considered, your petitioners humbly pray your honors that you do grant and allow a restraining order in due form
116 of law which shall restrain the said defendant, his agents, attorneys, and servants, from dealing, vending, making, using, or disposing to others to be used, any and all cotton-ties and buckles, or cotton-ties combined with bands, of the character protected by said letters patent set forth in said bill of complaint, or any combination of any buckles in the semblance of the ties secured to complainants, known in commerce as the Arrow tie, unless the said defendant is licensed and authorized to sell and deal in the same by your petitioners.

And will ever pray, &c.

(Signed) J. R. BECKWITH,
Solicitor for Petitioners.

Order granting restraining order.—Filed October 23d, 1876.

Circuit court of the United States, district of Louisiana.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et als., *vs.* CHARLES W. CHAPMAN. } In equity. No. 7930. Order.

Considering the petition of the complainants for restraining order herein, the averments of the bill of complaint and the affidavits submitted, and the fact which appears of record that the complainants have given due notice to the defendant of an application to the court for a preliminary injunction against said defendant:

On motion of J. R. Beckwith, solicitor for complainants, it is ordered that the said defendant, Charles W. Chapman, be, and he is hereby, inhibited and restrained, as well himself as his agents,
117 attorneys, and workmen, from directly or indirectly making, constructing, using, vending, delivering, or selling to others to be used or sold, or in anywise counterfeiting or imitating the inventions set forth or described in said bill of complaint, or any part thereof, and from using, vending, delivering, or selling to others to be used or sold, or in any cotton tie or buckle commonly known as the Arrow tie, until the further order of the court.

It is further ordered that before the clerk shall issue any restraining order based on this order, and before this order shall go into effect as such restraint, the said complainant, the said American Cotton-tie

Company, shall make and file in this cause a bond, with good and sufficient surety, in the sum of thirty thousand dollars, to be approved by the clerk of the said court, conditioned to indemnify the said defendant for all damages which may result to him from the effect of this order in the event that the same be determined to have been improperly allowed.

And it is further ordered that the said defendant have the right to bring on the pending motion for injunction at any time before the day named in the notice of motion on file, upon giving the complainant or their solicitors two days' notice thereof.

Thus ordered at chambers, this 21st day of October, 1876.

(Signed) W. B. WOODS,
U. S. Circuit Judge Fifth Circuit and District of Louisiana.

Affidavit of John Aitchison.—Filed October 23d, 1876.

John Aitchison, being first duly sworn, deposeth and saith that he is acquainted with the affairs and business of the said complainants, the said American Cotton-tie Company, Limited, and that he is
118 well acquainted with the kind and character of cotton-ties secured by the letters patent named in the bill herein, and sold and dealt in by the said cotton-tie company; and he further saith that the said cotton-tie company derive a large amount of profit in their business from the sale of and their dealings in the cotton-tie commonly known in trade as the Arrow tie; that the said tie is in great demand as being well adapted to the securing and confining bales of cotton and other compressible substances; that the tie complete consists of a buckle or link of a peculiar construction, combined with a flat hoop or band of iron; that the said buckle, combined with said band, as secured to the said complainants, is hereto attached and marked A; that the said complainants in their sale of said patented article have never licensed the use of the said invention for more than a single use, and that all of the said buckles are sold with the same device and condition stamped on them as shown by the said Exhibit A; that all of the trade are and have been for a long time now last past well aware of the fact that said ties were sold only by the complainants and the authorized agents of complainants, and that the same were sold with the limitation aforesaid, and that the said invention was secured by letters patent of the United States owned and controlled by the said complainants.

That this deponent is informed and verily believes that the said defendant herein, the said Chapman, has at all times been well aware of the premises; that the said defendant has in his possession, as this deponent is informed and verily believes, a large quantity of cotton-ties, as this deponent is informed and verily believes, amounting to at least three thousand bundles, which said ties are undoubted and exact imitations of the said cotton-ties represented by Exhibit A; that for the purpose of enabling the court to compare the same, one of the
119 class or kind of tie so in the possession of said defendant is also hereto attached as an exhibit and marked Exhibit B.

That the said defendant has, during the last year, as this deponent is informed, sold large quantities of ties of the character and description of Exhibit B, and thereafter to sell and dispose of to consumers the said large quantity so now in his possession as aforesaid. That the said defendant has no license or authority to sell, or offer for sale, the

said cotton-ties, either the said buckles, or the buckles combined with said band of iron, together constituting a cotton-tie.

That this deponent verily believes that the said wrongful acts by said defendant constitute an actual and intentional fraud upon the rights of the said complainant and an infringement of the rights under the said letters patent set forth in the bill herein; and said affiant further saith that said defendant Chapman, as this deponent is informed and believes, does not pretend that the said articles so sold by him and in his possession as aforesaid are in any respect different from the invention set forth and described in said bill of complaint, and secured to said complainants by letters patent, but pretends and holds forth that he has caused and procured to be gathered together buckles of the manufacture of said complainants which have been by the said complainants, or their agents, sold in the due course of trade and which have been used once on cotton-bales. That having obtained the said buckles he has combined or caused to be combined with each of said old buckles a new band of flat-iron, and by this means has, as he pretends, constructed a new tie, and that he has the right as the result of the fraud to enter the market and undersell and destroy the trade of complainants without regard to the right of the said complainants as secured by said letters patent; that this deponent does not know whether said pretense is true, or whether it is a false and untruthful invention contrived to excuse the infringement of said letters
120 patent, but he saith that said wrongful acts of said defendant have and will, unless restrained, cause the complainants great pecuniary loss.

(Signed) JOHN AITCHISON.

Sworn to and subscribed before me this thirteenth day of October, A. D. 1876.

[SEAL.] (Signed) JAMES GRAHAM,
Notary Public.

(Cuts of Arrow ties. Exhibits A and B referred to in the above affidavit are inserted in the original.)

Bond for restraining order.—Filed October 21st, 1876.

Know all men by these presents that we, The American Cotton-tie Company, a body corporate, the complainants in the suit No. 7930 of the docket of the circuit court of the United States for the district of Louisiana, The American Cotton-tie Company et al. vs. Charles W. Chapman, defendant, as principals, and R. W. Rayne, of the city of New Orleans, as surety, are by these presents held firmly bound unto the said Charles W. Chapman in the full sum of thirty thousand dollars, for the payment of which well and truly to be made we do hereby bind ourselves, our heirs, executors, and administrators, as witness our hands and seals this 23d day of October, A. D. 1876.

The condition of this obligation is such that whereas the honorable W. B. Woods, the judge of the circuit court of the United States for the district of Louisiana, did, on the 21st day of October, A. D. 1876, grant and allow in the above-described cause an order restraining the said defendant, Charles W. Chapman, from doing and performing the several acts and alleged wrongs as set forth in the bill of com-
121 plaint as prayed for therein, the petition for said restraining order, and in the order of said court in the premises of record in said cause:

Now, therefore, the condition of this obligation is such that if the above-named corporation and surety shall well and truly pay unto the said defendant, Charles W. Chapman, or his legal representatives, all legal damages which may be adjudged against the said complainants in the event that it should be finally determined and adjudged that the said restraining order was illegally and improperly issued, granted, and allowed in said case, then in that case this obligation shall be null and void, but otherwise to remain in full force and effect.

(Signed) THE AMERICAN COTTON-TIE COMPANY, LIMITED,
By R. W. RAYNE & CO., *General Agents.*
(Signed) R. W. RAYNE.

Approved.
(Signed) F. A. WOOLFLEY,
Clerk United States Circuit Court, District of Louisiana.

122 *Restraining order.—Issued October 23d, 1876.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth judicial circuit and district of Louisiana.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et als.,
vs.
CHARLES W. CHAPMAN.
} No. 7930.

The President of the United States to Charles W. Chapman, greeting:

Whereas it has been represented unto us in our said circuit court, on the part of The American Cotton-tie Company, Limited, et als., in a bill in equity lately exhibited against you, the said Charles W. Chapman, touching certain matters and things therein set forth; and whereas the honorable Wm. B. Woods, one of the judges of our said court, upon due consideration thereof, and of the petition of the complainants has made and allowed an order in said cause whereby you, the said Charles W. Chapman, are allowed the right to bring on the pending motion for injunction at any time before the day named in the notice of motion on file, upon giving the complainants, or their solicitors, two days' notice thereof; and whereas the said judge has granted and allowed an order restraining you, the said Charles W. Chapman, your agents, attorneys, workmen, and servants, and each of you, immediately and forthwith, to the full effect and extent as prayed for in said bill and in said petition:

123 Now, therefore, in consideration of the premises and of the allegations in said bill and said petition contained, you, the said Charles W. Chapman, your agents, attorneys, workmen, and servants, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, from directly or indirectly dealing, vending, making, using, or disposing, to others to be used or sold, any and all cotton-ties and buckles, or cotton-ties combined with bands, of the character protected by the letters patent set forth in said bill in equity, or any combination of any buckles in the semblance of the tie secured to said complainants, known in commerce as the Arrow tie.

And that you, the said Charles W. Chapman, your agents, attorneys, workmen, and servants, and each of you, remain so inhibited and re-

strained by said order until the further order of our said court in the premises.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 23d day of October, A. D. 1876.

[SEAL.] (Signed) F. B. VINOT,
Deputy Clerk.

Marshal's return.

Received October 23d, 1876, by the marshal, and on same day, month, and year served a copy of within restraining order on Charles W. Chapman, named herein, by handing the same to him in person.

New Orleans, October 25th, 1876.

(Signed) T. R. G. PITKIN,
U. S. Marshal,
By S. W. REED,
Deputy U. S. Marshal.

124 *Notice by complainants.—Filed October 28th, 1876.*

Circuit court of the United States, district of Louisiana.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al.,
vs.
CHARLES W. CHAPMAN.
} In equity. No. 7930. Notice.

The defendant will please take notice that on the hearing of the motion for preliminary injunction in this cause the complainants will, in support of said motion, among other things, rely on the pleadings, orders, decrees, verdict and judgment, affidavits and exhibits, and evidence produced by the plaintiffs and complainants, and of record in the following causes in this court, numbered on the docket in this court as follows:

F. Cook et al. vs. A. Stewart et al., No. 6663.
McComb et al. vs. Geo. Brodie, No. 6438.
F. Cook et al. vs. John S. Wallis, No. 6660.
F. Cook et al. vs. F. B. Ernest et al., No. 6659.
F. Cook et al. vs. George Brodie, No. 6655.

(Signed) J. R. BECKWITH,
Sol'r for Complainants.

125 *Affidavit of Ben. O. L. Rayne.—Filed October 28th, 1876.*

DISTRICT OF LOUISIANA:

Circuit court of the United States, district of Louisiana.

THE AMERICAN COTTON-TIE COMPANY, Limited, et al.,
vs.
CHARLES W. CHAPMAN.
} No. 7930.

Being first duly sworn, deposeth and saith that he is one of the agents of The American Cotton-tie Company, Limited, the plaintiffs in the case

of The American Cotton-tie Company, Limited, et al., v. Charles W. Chapman, in the United States circuit court, district of Louisiana; that he is well acquainted with the affairs and business of said company; that the profits of the business of said company arise and accrue to the company from the manufacture and sale of cotton-ties under the letters patent set forth in the bill of complaint in said bill in said above-described case; that the rights of the said company to the exclusive use of the said invention patented by the said letters patent has been adjudicated upon as set forth in said bill of complaint, either at the instance of the said complainants or the assignors of said patent; that the said patentees have been for a long time before, and at all times since the said adjudication, recognized as the true and sole owners of the said letters patent, and of the monopoly of sale and manufacture of the said invention secured by said letters patent; that upon the first of their ownership of said invention and said letters patent, as
126 well as upon the judicial recognition of their said rights, as set forth in said bill of complaint, said company have incurred great expense in procuring, and have on hand a large stock of cotton-ties of the character described and secured to them in said letters patent, and when undisturbed by fraudulent and wrongful infringement of their rights have realized very considerable profit from the manufacture and sale of said invention, and would do so during the present time but for the defendant, the said Chapman, and others engaged like him in the deliberate and methodical violation of the rights of said company, and the systematic infringement of said letters patent; that said company have on hand, and contracted for, a sufficient quantity of cotton-ties to supply the entire demand therefor.

That their cotton-ties are the ties almost exclusively used in baling cotton, for the reason that the same are better adapted to that purpose than any other form of tie, and are and since their invention have been so at all times considered; so that the demand is large, and would if not interfered with insure the sale of all the stock of said company; but said deponent saith that said defendant, Chapman, has systematically set to work to injure said company.

That he caused to be published in the local newspapers of the city of New Orleans advertisements of the character hereto annexed; that he put himself in communication with the cotton-factors and persons purchasing cotton-ties, and has sold unlawfully to the consumers in the State a large quantity of cotton-ties, of a character so precisely similar to the ties secured to said company, at a lower price than the rate at which said company sell the same, that the result has been a large loss of profit to said company; and unless arrested the sale of said cotton-ties by the said defendant and the encouragement given to others by the unlawful acts of the said defendant will result in rendering the said letters
127 patent of said complainants utterly worthless, and the great expenses to which said complainants have been subjected to obtain said patent and vindicate the same an absolute loss.

That said complainants are the sole owners of said letters patent and of the invention secured thereby; that they have not nor do they intend to license any other person to manufacture or sell such invention; that they at a large expense and outlay have prepared to supply the entire demand for said cotton-tie, and that their profit from the ownership of said right, secured by said letters patent, resulted and accrued to them from the sale of the said invention, and not from the sale of rights to manufacture or vend said invention—all of which the said defendant has at all times well known; that it is difficult to de-

termine the exact extent of the injury inflicted on the complainants by the said wrongful acts of the said defendant, but that the same is very large.

That the said complainants, under said patents, have and do manufacture and sell cotton-tie buckles of the form and style, kind, and character hereto annexed, which, when combined with a flat band of iron, constitutes the cotton-tie secured to and sold by said complainants.

That the said defendant has sold and offered to sell, in competition with said complainants, a cotton-tie in all material respects the same, which will appear by an examination of the exhibits attached to the affidavit of John Aitchison, already on file in this cause.

That this deponent is informed and verily believes that nearly all of the persons who purchase said ties of the said Chapman, or who use the same, are so deceived by the similarity between said ties and the invention owned by said complainants that they, with the exception of such persons as are in actual conspiracy with said Chapman, believe that the ties are the genuine tie sold by said cotton-tie company, complainants.

128 And said deponent further saith that the said Chapman has no license or authority from the said complainants, or from any of said patentees, or from any person authorized to give the same, to make, use, vend, or deliver to be used, vended, or otherwise dispose of cotton-ties or any part of the said invention secured to said complainants, as set forth in said bill of complaint, within the limits of the United States.

(Signed) BEN. O. L. RAYNE.

Sworn to and subscribed before me this 28th October, 1876.

(Signed) J. W. GURLEY,
Com'r U. S. Circuit Court, Dist. of Louisiana.

Affidavit of Joseph McHaffie Holmes.—Filed October 28th, 1876.

State of Louisiana, U. S. circuit court.

THE AMERICAN COTTON-TIE COMPANY, Limited, et al., *vs.* CHARLES W. CHAPMAN. } No. 7930.

Joseph McHaffie Holmes, being first duly sworn, deposeth and saith that in the years 1872, 1873, and 1874 he was in Liverpool, England, in the employ of James Jennings McComb and The American Cotton-tie Company, of which company the said McComb was managing partner, now director of The American Cotton-tie Company, Limited, complainants in the above-named suit, during which time he was cor-

129 respondent, shipping-clerk, and cashier, and that he is well acquainted with the affairs and business of the said J. J. McComb.

He further deposeth and saith that he is personally acquainted with the defendant in the above-named suit, Charles W. Chapman, and also that he is well acquainted with the business relations that existed between the said McComb and the said Charles W. Chapman, and to his own certain knowledge he hereby deposeth and saith that no license was, previous to or during the year 1874, given by the said J. J. McComb or by any authorized party whomsoever identified with the

aforesaid American Cotton-tie Company to the said defendant, or to any other party whatever, to make, use, or vend, or deliver to others to make, use, or vend, in the United States of America, the Arrow tie or any form of cotton-tie whatsoever, by virtue of patents owned and held by the said McComb or The American Cotton-tie Company as aforesaid; and by reason of his connection as correspondent and general clerk to R. W. Rayne & Co., general agents of the complainants, The American Cotton-tie Company, Limited, since the year last referred to, 1874, he does, of his own knowledge, depose and say that no license has been granted, nor does any license exist, given by the said J. J. McComb, or by said McComb as managing partner of The American Cotton-tie Company aforesaid, or by the complainants in the above-named suit, The American Cotton-tie Company, Limited, to make, use, or vend the Arrow tie, or any form of cotton-tie, by virtue of patents owned and controlled by said McComb, the said American Cotton-tie Company, or by the complainants in the above-named suit, The American Cotton-tie Company, Limited.

Lastly, deponent affirms that the sale of Arrow cotton-ties by the said defendant, Charles W. Chapman, has caused great pecuniary loss to the American Cotton-tie Company, Limited, and that his advertisement for the sale of Chapman ties is a deception and a serious and grave offense in violation of the rights of the aforesaid American
130 Cotton-tie Company, Limited, and that these, his acts, have encouraged numerous other parties to pursue the same course of wrong-doing, to the great injury and detriment of the interests of the said complainants, The American Cotton-tie Company, Limited.

(Signed) JOSEPH McH. HOLMES.

Sworn to and subscribed before me this 28th October, A. D. 1876.

[SEAL.] (Signed) J. W. GURLEY,
Com'r U. S. Circuit Court,
Dist. of Louisiana.

Affidavit of Henry Shaw.—Filed October 28th, 1876.

DISTRICT OF LOUISIANA, *ss.:*

Henry Shaw, being first duly sworn deposeth and saith that he is well acquainted with the business of The American Cotton-tie Company, Limited, complainants in the cause of The American Cotton-tie Company, Limited, et al., vs. Charles W. Chapman, No. 7930 of the docket of the circuit court of the United States for the district of Louisiana; that the business of the said company is the sale of the cotton-tie for baling cotton known as the "Arrow tie," secured to the said company by letters patent of the United States described and set forth in the bill of complaint in the above-entitled cause; that the cotton-tie buckle manufactured under the said letters patent and sold by said company are the same as hereto annexed, and are secured to said
131 complainant by said letters patent set forth in said bill of complaint and duly-executed assignments.

(Signed) HENRY SHAW.

Sworn to and subscribed before me this 28th October, 1876.

[SEAL.] (Signed) J. W. GURLEY,
Com'r U. S. Circuit Court for
Dist. of Louisiana.

[Cut of Arrow buckle. Cut of Arrow buckle.

Affidavit of Joseph McHaffie Holmes.—Filed October 30th, 1876.

State of Louisiana, United States circuit court.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et als.,
vs.
CHARLES W. CHAPMAN.

Joseph McHaffie Holmes, being first duly sworn, deposeth and saith that at the time he entered the employ of J. J. McComb, Liverpool, England, in the year 1872, which said McComb is now director of the American Cotton-tie Company, Limited, complainants in the above-named suit, he found that the Arrow tie was stamped "licensed for one use only," and that they have been so stamped up to the present time; and, further, deponent saith that to the best of his knowl-
132 edge and belief they were so stamped for a period of two years previous to his entering the employ of said J. J. McComb.

(Signed) JOS. McH. HOLMES.

Sworn to and subscribed before me this 30th October, 1876.

[SEAL.] (Signed) J. W. GURLEY,
Commissioner United States Circuit Court, District of Louisiana.

Affidavit of F. B. Parkinson.—Filed October 30th, 1876.

State of Louisiana, United States circuit court.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al.,
vs.
CHARLES W. CHAPMAN.
No. 7930.

Franklin B. Parkinson, being first duly sworn, deposeth and saith that he is bookkeeper for R. W. Rayne & Co., general agents of The American Cotton-tie Company, Limited, and of his own personal knowledge knows that the bill-heads used by the company and their agents have had printed on them a clause licensing the buckles sold by them for use once only.

That in 1873 and since to the present year the following words were printed on the bill-heads:

"The cotton-ties included in this invoice are licensed to be used once only as baling-ties, and are sold and purchased subject to this restriction." (Exhibit A.)

133 That in 1876 the following words were used: "Each bundle of cotton ties charged in this invoice consists of thirty bands. The buckle accompanying these bands are the property of The American Cotton-tie Company, Limited, and are licensed to be used for one season only, the company reserving the right, after such use, to recover possession of them wherever found." (Exhibit B.)

Deponent further says that the buckles themselves are, and have been for several years past, stamped with the words, "Licensed for use once only."

(Signed) F. B. PARKINSON.

Sworn to and subscribed before me, this 30th October, 1876.

[SEAL.] (Signed) J. W. GURLEY,
Commissioner United States Circuit Court, District of Louisiana.

Exhibit A, referred to in affidavit of F. B. Parkinson, and filed October 30th, 1876.

[The cotton-ties included in this invoice are licensed to be used once only as baling-ties, and are sold and purchased subject to this restriction.]

[Cut of cotton-bale.]

NEW ORLEANS, *November 8th*, 1875.

Messrs. Stone & Tutt bought of The American Cotton-tie Company, R. W. Rayne & Co., general agents, No. 23 Union and 48 Carondelet streets:

1,000 B'dl's 11 ft. Arrow-ties, 56,000 lbs., @ 5½	3,080 00	
Less 10 per cent	308 00	
		2,772 00

134 *Exhibit B, referred to in affidavit of F. B. Parkinson, and filed October 30th, 1876.*

[Each bundle of cotton-ties charged in this invoice consists of 30 bands. The buckles accompanying these bands are the property of "The American Cotton tie Company, Limited," and are licensed to be used for one season only; the company reserving the right, after such use, to recover possession of them wherever found.]

[Cut of cotton-bale.]

MOBILE, ALA., , 187 .

M bought of The American Cotton-tie Company, Limited, per Murray, Vass & Co., agents, 2½ per cent. discount for cash:

B'dl's 11 ft. ties, @.....

135 *Answer.—Filed October 30th*, 1876.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al., *vs.* CHARLES W. CHAPMAN. } No. 7930.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The answer of Charles W. Chapman, a subject of the Queen of Great Britain and Ireland, defendant to the bill of complaint of The American Cotton-tie Company et al., complainants.

The defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, saith:

That so far as the allegations contained in the first eight pages of said bill, and in the first nineteen lines of the ninth page thereof, are concerned, this defendant admits the same to be true. That so far as the other allegations contained in said bill are concerned this defend-

ant denies each and every one thereof, and says that the same are in no manner true; that this defendant is not, and has not been, within this district or elsewhere, unlawfully or wrongfully making, constructing, using, or vending to others to be used, metallic ties for cotton-
136 bales made according to the several patented inventions of the complainants; that this defendant has never made or constructed any such ties made according to said patents, but this defendant has purchased such ties made under said patents by complainants, or their assigns or agents, from parties who themselves purchased from complaints or their representatives, and defendant has and is vending for use such ties thus acquired by him, every one of which was originally manufactured and sold by complainants, and each one of which by such sale passed from the protection of said patents and became the property of the purchaser to be treated by him as any other property to him appertaining.

That this defendant has been engaged in his said business of selling such ties as aforesaid for upward of six years, to the full knowledge of complainants and their assignors, and has never before been disturbed therein by complainants or their assignors, and his said business has been very extensive; and defendant has sold large quantities of said ties acquired by him as aforesaid to said complainants and their assignors, especially through their representative, J. J. McComb, in Liverpool, England, in the years 1871, 1872, and 1873, and no attempt has previously been made to interfere with defendant's business, and by virtue of such transactions, and the long-continued assent of complainants and their assignors, they are now estopped both in law and equity from attempting to restrain this defendant in the transaction of his said business in which by the said acts and acquiescence of complainants, and their assignors, he has been induced to invest a large amount of money, which would be lost if defendant's business were new interfered with.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this de-
137 fendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge and belief of this defendant—all which matter and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) HORNOR & BENEDICT,
Solicitors.

(Signed) C. W. CHAPMAN.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

On this 30th day of October, 1876, before me personally appeared Charles W. Chapman, the above-named defendant, who, being by me duly sworn, deposes and says that he has read the foregoing answer subscribed by him, and that the same is true of his own knowledge, and as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) K. LOEW,
Commissioner Circuit Court.

Affidavit of Charles W. Chapman.—Filed October 30th, 1876.

United States circuit court.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et als.,
vs.
CHARLES W. CHAPMAN.

Charles W. Chapman, being duly sworn, deposes and says that
138 he is a subject of the Queen of Great Britain and Ireland, and temporarily resident in New Orleans; that he has been engaged in the business of selling cotton-ties and buckles of the manufacture of complainant and its assignors for upward of six years past, to the full knowledge of said complainant and its assignors, most of whom are now its principal employés, and has never heretofore in any way been disturbed, hindered, or molested in his said business by complainants, or any one in their behalf, or by their assignors.

That affiant's said business has been very extensive, and he has sold large quantities of said ties to complainants and their assignors, especially through their representative, J. J. McComb, in Liverpool, England, in the years 1871, 1872, and 1873.

That affiant procured said ties and buckles by himself and others for him from parties who themselves purchased from complainants or their assignors or representatives, every one of which by such sale passed from the protection and monopoly of plaintiff's patents and became the property of the purchaser, to be treated by him as any other property to him appertaining. That most of affiant's purchases of said ties and buckles have been shipped to him from England, some of the invoices of which are attached hereto, duplicate originals, as exhibits, marked A^1, A^2, A^3, and A^4, the originals of which are on file in the custom-house of this port, and cannot be here produced in original.

That affiant has never sold any ties or buckles except those of the complainants and their assignors, and of their manufacture, and affiant has never represented the ties and buckles sold by him as anything else, and has publicly prosecuted his said business both in this country and in England for the past six years and more, under full cognizance of complainants and their assignors and without interference.

That affiant has frequently seen said ties and buckles such as
139 he sells, and such as are manufactured and sold by complainants, used in different cotton-presses in New Orleans; that in said presses it is customary to receive cotton from the plantations bound with such ties and buckles; that when said bales are ready to be compressed said ties and buckles are stripped off from said bales and thrown on one side in a pile promiscuously with others, and when said bales are in the press they are fastened together by the first ties that may be reached by the pressman out of said pile, no care or trouble being taken to use the same ties upon the bale when compressed which were taken off it before the compressing was accomplished.

That affiant is familiar with the manner in which the complainant and its assignors effects and effected sales of its cotton-ties and buckles, and has been present at such sales; that such sales were always altogether unconditional and absolute, and until recently were made by the pound, at so much a pound, and recently have been made by the bundle, at so much a bundle.

And affiant annexes hereto the commercial card and price-list of said complainants, which was issued by it in this city, as Exhibit A[5].

That affiant is familiar with the cotton market in this country and in England; that buyers of cotton here in New Orleans purchase the whole bale as it stands or is received at so much per pound, including bands, buckles, bagging, &c., and pay the same price for the bands and buckles and bagging as they do for the cotton itself, the planter thus after selling buckles and bands that cost him only six cents per pound at the rate of ten cents per pound, or upward, according to the price of the cotton at the date of sale; thus the purchaser of the bale of cotton becomes the absolute owner of it, with all its bands, buckles, &c., without any conditions or restrictions whatever; there is no tare allowed, a scalage of two pounds per bale to cover any accumulation of
140 dust or dirt on the bale being the only allowance made.

(Signed) C. W. CHAPMAN.

Sworn to and subscribed before me, the undersigned notary, this 27th day of October, A. D. 1876.

[SEAL.] (Signed) JAMES GRAHAM,
Notary Public.

Exhibit A 1, *referred to in C. W. Chapman's affidavit.—Filed October 30th*, 1876.

Invoice of three thousand one hundred and sixty bundles riveted second-hand pieced cotton-ties, shipped per steamer St. Louis to New Orleans.

3,000 bundles riveted second-hand cotton-ties, 11 feet, w'g 71 tons, at £7 per ton	£497
160 bundles rivited second-hand cotton-ties, 8 feet 6 in., w'g 4 tons, at £7 per ton	28
	£525

Delivered free on board.
E. & O. E.

W. FRANKLIN.

LIVERPOOL, 16*th April*, '75.

141 *Exhibit A* 2, *referred to in C. W. Chapman's affidavit.—Filed October 30th*, 1876.

(Copy.)

Invoice of one thousand eight hundred and eighty bundles riveted second-hand iron cotton-ties, shipped per Vanguard to New Orleans.

1876.

June 14. 1,880 bundles riveted second-hand iron cotton-bands, w'g 47 ton to qr., at £6 per ton	£282 3

Delivered free on board.
E. & O. E.

W. FRANKLIN.

LIVERPOOL, 14*th June*, '76.

Exhibit A 3, referred to in C. W. Chapman's affidavit.—Filed October 30th, 1876.

Invoice of two thousand four hundred and forty-seven bundles riveted second-hand iron cotton-ties, shipped per Alice to New Orleans.

1876.
May 6. 2,447 bundles riveted second-hand iron cotton-bands, w'g 61 t. 13 0, at £6 per ton..... £369 18 0
Delivered free on board.
E. & O. E.

W. FRANKLIN.

LIVERPOOL, *6th May*, '76.

142 *Exhibit A 4, referred to in C. W. Chapman's affidavit.—Filed October 30th*, 1876.

(Copy.)

Invoice of seven hundred and four bundles riveted second-hand cotton-ties, shipped per Vanguard to New Orleans on account and risk of C. W. Chapman, and consigned to order.

1875.
Sept. 7th. 704 bundles riveted second-hand cotton-ties, w'g 17 t. 7 3 0, at £7 per ton..... £121 14 3
Delivered free on board.
E. & O. E.

W. FRANKLIN.

LIVERPOOL, *8th September*, '75

Affidavit of J. Davier.—Filed October 30th, 1876.

United States circuit court.

THE AMERICAN COTTON-TIE COMPANY
vs.
CHARLES W. CHAPMAN.

J. Davier, being duly sworn, deposes and says that he resides in New Orleans, and is engaged in business as shipping-clerk in the Jackson Cotton Press in New Orleans; that he is familiar with the business of compressing cotton in bales, which bales are secured by the
143 iron ties and buckles sold by The American Cotton-tie Company; that it is customary to receive cotton from the plantations in bales bound with such ties; that when such bales are ready to be compressed for shipment said ties and buckles are stripped off from said bales and thrown on one side in a pile promiscuously with others, and when said bales are compressed they are not necessarily fastened by the same ties and buckles formerly removed from them, but by the first ties and buckles that may be reached by the pressmen out of said pile, or another pile, no care or trouble being taken to use the same dies and buckles that were taken off, nor the same buckles on the original bands, but each are taken up and used just as they came to hand.

(Signed) J. DAVIER.

Subscribed and sworn to before me, this 28th day of October, A. D. 1876.

[SEAL.] (Signed) J. G. EUSTIS,
United States Commissioner, District of Louisiana.

Affidavit of H. W. Chaffe and Charles E. Black.—Filed October 30th, 1876.

THE AMERICAN COTTON-TIE COMPANY
vs.
CHARLES W. CHAPMAN.

William H. Chaffe and Charles E. Black, being duly sworn, depose and say that they reside in New Orleans, and are by occupation
144 cotton-factors and commission merchants in said city, and have been engaged in said business for several years; that affiants are familiar with the manner in which The American Cotton-tie Company effects and has effected sales of its cotton ties and buckles, and affiants have purchased the same for their customers from said company, its agents or assignors; that such sales were always altogether unconditional and absolute, and until recently were made by the pound, at so much per pound, and recently have been by the bundle, at so much per bundle.

That affiants are familiar with the cotton market in this country and in England; that buyers of cotton here in New Orleans purchase the whole bale as it stands or is received, at so much per pound, including bands, buckles, bagging, &c., and pay the same price for the bands, buckles, and bagging as they do for the cotton itself, the planter thus after selling buckles and bands that cost him only six cents per pound at the rate of ten cents per pound or upward, according to the price of cotton at the date of sale; thus the purchaser of the bale of cotton becomes the absolute owner of it, with all its bands, buckles, &c., without any conditions, notice, or restrictions whatever; and there is no tare allowed, a scalage of two pounds per bale to cover any accumulation of dust or dirt on the bale being the only allowance made.

(Signed) CHAS. E. BLACK.
(Signed) WM. H. CHAFFE.

Sworn to and subscribed before me, the undersigned notary, this 27th day of October, A. D. 1876.

[SEAL.] (Signed) JAMES GRAHAM,
Notary Public.

145 *Entering continuance.—Extract from the minutes, April term, 1876.*

NEW ORLEANS, *Monday, October 30th*, 1876.

The court was opened pursuant to adjournment.
Present, Hon. E. C. Billings, district judge.

AMERICAN COTTON-TIE COMPANY, LIMITED, et al.,
vs.
CHARLES W. CHAPMAN.
No. 7930.

This cause came up to be heard on the motion of complainants for an injunction.

Singleton & Browne and J. R. Beckwith, for complainants; Horner & Benedict, for defendant.

When, by consent, the same is continued till to-morrow.

Affidavit of Samuel S. Carlisle.—Filed October 31st, 1876.

STATE OF LOUISIANA,
Parish of Orleans, ss:

Before me, the undersigned notary public in and for the State and parish aforesaid, personally appeared Samuel S. Carlisle, who, being duly sworn, deposes and says that he is of lawful age, and resides in the city of New Orleans, and is by occupation an attorney at law; that from about August 15th, 1871, to August, 1875, he was engaged with Messrs. Bartlette and Rayne, general agents of The American
146 Cotton-tie Company, and R. W. Rayne & Co., successors to Bartlette & Rayne, during which period his time was occupied as correspondent and invoice clerk, and that all the bills for Arrow cotton-ties made out by him for the seasons of 1873, 1874, and 1875 contained a stipulation that the said Arrow cotton-ties were sold for use once only.

(Signed) SAMUEL S. CARLISLE.

Sworn to and subscribed before me, the undersigned notary, this 31st day of October, 1876.

(SEAL.) (Signed) JAS. GRAHAM,
Notary Public.

Affidavit of J. McH. Holmes.—Filed Oct. 31st, 1876.

Circuit court of the United States, district of Louisiana.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al.,
vs.
CHAS. W. CHAPMAN.
} In equity. No. 7930.

Joseph McH. Holmes, being first duly sworn, deposeth and saith that he has been connected with the business of The American Cotton-tie Company, and the owners of the letters patent set forth in the bill of complaint herein, from the time when they first began the manufacturing of ties under the said patent.

That it is not true that J. J. McComb, of Liverpool, England, in the year 1871, 1872, or 1873, in any manner authorized the said defendant to sell cotton-ties as set forth in his answer; that the said
147 McComb had no authority so to do, but that it is true that some time between the dates aforesaid, the said McComb being acquainted with the said Chapman, and finding the said Chapman in Liverpool, without employment, did, to aid him, agree with him that if he, Chapman, would gather up the old ties or buckles in England and deliver them to the patentees or owners of the patents, and no one else, that he, McComb, would pay him a specified price therefor; that this was done, and the said McComb made that arrangement in order to prevent the possible unlawful second use of said ties and buckles by unauthorized persons; that instead of a license to sell said buckles and ties, or an acquiescence in such general sale, the same was an expedient to prevent the possibility of a fraudulent sale of the same, and in order

that Chapman might carry out this purpose the said McComb furnished him with means to enter upon the enterprise, and further agreed that, upon special application and with special consent obtained, he, defendant, might sell the ties so gathered up in Brazil, and to parties in the Turkish dominions, where the said complainants had no patents; that the said Chapman entered on said enterprise, but that after a short time the said McComb, being dissatisfied with the manner in which defendant carried on the business, withdrew said permission.

That this arrangement was broken off about the early part of seventy-five.

That deponent was in the employ of McComb before the organization of The American Cotton-tie Company, Limited, complainants, and in the employ of the company since its formation.

That he was employed in England from to June, 1874.

That he is cognizant of the business relation of Chapman and McComb, as the dealings with Chapman were all recorded by him, of which business this deponent had charge, as all the money ad-
148 vanced to Chapman by McComb and The American Cotton-tie Company, the predecessor of The American Cotton-tie Company, Limited, the complainants herein, passed through deponent's hands while he was in the employment as cashier of said McComb and the said company.

(Signed) JOS. McH. HOLMES.

Sworn to and subscribed before me, this 31st October, 1876.

[SEAL.] (Signed) J. W. GURLEY,
Com'r U. S. Circuit Court, District of Louisiana.

Affidavit of Ben. O. L. Rayne.—Filed October 31st, 1876.

Circuit court of the United States, district of Louisiana.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al.,
vs.
CHARLES W. CHAPMAN.
} No. 7930.

Benj. O. L. Rayne, being duly sworn, deposeth and saith that he is an agent of The American Cotton-tie Company, the complainant; that he has been acquainted with the cotton-tie business for the period of six years; that he has been during all that time familiar with the rights of the patentees and the inventions secured by the said letters patent set forth in the bill of complaint herein; that the bundle of cotton-ties produced in court marked on the tag attached thereto "hard times" was sold by the said defendant for use and consumption
149 some time in the month of September last, and that the complainants obtained the same from the purchaser thereof from defendant; that the same is a fac-simile of a large number of bundles of cotton-ties sold by the same defendant; that the same is a fac-simile of the cotton-tie owned by the complainants, and secured by the said letters patent; that evident care has been taken to make the appearance of the said bundle presented to the court the same in appearance as the genuine article in all respects, even to the kind and shape of the iron by which the same is bound together, as will appear to the court by comparison with a bundle of the genuine cotton-tie as manufactured under the patent and furnished to consumers by the said complainants,

which is also produced in court for comparison, and marked on the tag "Arrow."

That the said cotton-tie sold by the said defendant cannot now be distinguished from the genuine tie, even by an expert, and would in all respects deceive the public.

That said tie is made from new iron bands or bonds, which have never been before used in baling cotton; that there is nothing about the buckle to indicate that they have been used on ties before, and that no person not absolutely acquainted with the individual history of each separate buckle can credibly swear that the same has been used at any time, or that the same are not counterfeited buckles in the similitude of the genuine patented buckle of the said complainant.

That the said tie sold by defendant is so constructed that the same is intended and can only be used by passing the flat band of the tie through the slotted buckle, and bending the same back under in such form that the same is held in place and prevented from slipping by the expansive force of the bale of cotton about which the same is placed.

That it is not true that the said complainants have ever licensed the defendant to sell their ties; that it is not true that the complain-
150 ants have ever acquiesced in the breach of the condition on which they furnish their ties to the public, either by the defendant or any other person; that, on the contrary, they have by all means in their power attempted to prevent the said breach; that for that purpose they have instituted and are carrying on litigation in all parts of the country, and that they have promptly notified all persons, including the defendant, to desist from such violation of their rights as soon as such violation has been discovered; that the act of the said defendant and others engaged in the like unlawful breach of complainants' right threatens to ruin and destroy the property of complainants in said invention as secured by said letters patent.

(Signed) BEN. O. L. RAYNE.

Sworn to and subscribed before me this 31st October, 1876.

[SEAL.] (Signed) J. W. GURLEY,
Commissioner United States Circuit Court,
District of Louisiana.

Note of evidence.—Filed October 31st, 1876.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, *vs.* CHARLES W. CHAPMAN. } No. 7930.

The application for an injunction was called up.

J. R. Beckwith and Singleton & Browne for complainants; Hornor & Benedict for defendant.

151 Plaintiff offers in evidence notice of 28th October, 1876.

Plaintiff reads the affidavit of John Aitchison.

Plaintiff reads affidavit of Ben. O. L. Rayne.

Plaintiff reads affidavit of B. O. L. Rayne.

Plaintiff reads affidavit of J. McH. Holmes.

Plaintiff reads affidavit of J. McH. Holmes.

Plaintiff reads affidavit of B. F. Parkinson.

Plaintiff reads affidavit of S. S. Carlisle.

Plaintiff reads affidavit of Henry Shaw.

Plaintiff offers patents and reissues, marked 1, 2, 3, 4, 5.
Plaintiff offers affidavit of Joseph McH. Holmes.
Defendant reads the answer to the bill; also his affidavit, filed October 30th, 1876.
Defendant offers Exhibits A^4, A^1, A^2, A^3, all filed October 30, 1876; also Exhibit A^5, filed same day.
Also affidavit of W. H. Chaffe and Charles E. Black.
Also affidavit of J. Davier.
Offered by complainant letters patent granted to Frederic Cook, dated March 2d, 1858, No. 19490, and certificate of extension for improvement in metallic ties for cotton-bales.

152 *Entering continuance.—Extract from the minutes, April term, 1876.*

NEW ORLEANS, *Tuesday, Oct.* 31, 1876.

Court met pursuant to adjournment.
Present, Hon. Edward C. Billings, district judge.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et als.,
vs.
CHARLES W. CHAPMAN.

The application for an injunction in this cause was called up.
J. R. Beckwith and Singleton & Browne for applicants; Hornor & Benedict for defendant.
And after hearing the evidence and argument, the same is continued till to-morrow, at 10.30 a. m.

153 *Entering continuance.—Extract from the minutes.*

WEDNESDAY, *November 1st*, 1876.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al.,
vs.
CHARLES W. CHAPMAN. } No. 7930.

This cause was again resumed on the complainants' motion for an injunction, and, after hearing further argument, the same was continued till to-morrow, at ten o'clock a. m.

Entering submission of cause.—Extract from minutes of November 2d, 1876.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al.,
vs.
CHARLES W. CHAPMAN. } No. 7930.

This cause came on to be further heard on the complainants' motion for an injunction, and, after hearing argument, the court took time to consider.

154 *Replication.—Filed November 14th, 1876.*

DISTRICT OF LOUISIANA, *ss:*

Circuit court of the United States, district of Louisiana.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et als., *vs.* CHAS. W. CHAPMAN. } In equity.

Replication of all of the complainants to the answer of said defendant.

These repliants, saving and reserving unto themselves all and all manner of exception to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver and prove said bill to be true, certain, and sufficient in law to be answered unto, and that said answer of said defendant is uncertain, untrue, and insufficient to be replied unto by them replicant; without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things that repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in said bill they have already prayed.

(Signed) J. R. BECKWITH,
Solicitor and Counsel for Complainants.

155 *Entry in chancery order-book.—November rules, 1876.*

FRIDAY, *November 17th*, 1876.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al., *vs.* CHAS. W. CHAPMAN ET AL. } No. 7930.

The complainants herein have this day filed their replication to the answer of the defendant.

Decretal order for injunction pendente lite.—Entered and filed November 24, 1876.

United States circuit court, fifth circuit and district of Louisiana.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al., *vs.* CHARLES W. CHAPMAN. } In equity, Nos. 7930. Decretal order for injunction pendente lite.

November term, A. D. 1876.

Present, Hon. Edward C. Billings, district judge, presiding.

This cause having been brought on for hearing on the motion for injunction pendente lite, and the same having been duly heard
156 on the said motion on the bill, answer, exhibits, and affidavits, as well of the said plaintiff complainants as the said defendants,

and the court having heard counsel as well for the said complainants as the said defendant, and, being fully advised in the premises, and it appearing to the court that the said complainants are the legal and equitable owners of the said letters patent of the United States averred and set forth in the said bill of complaint, and as such owners entitled to the exclusive right to make, construct, use, and vend to others to be used the said invention named and described in the said several letters patent within the territorial limits of the United States, patenting the invention and discovery of a cotton-tie buckle having an open slot or slit, into which a flat iron band can be inserted sideways, known commonly as the open-slot buckle, described and set forth in the said letters patent granted to Frederic Cook and James J. McComb, and that the said owners of the said patented invention have successfully maintained their right to the exclusive use of said invention in the courts of the United States, as averred and set forth in said bill; and it further appearing to the satisfaction of the court that the said complainants are the owners of the rights secured by the said letters patent granted to the said George Brodie, named in the said bill of complaint, and the reissue thereof, and that by the third and fourth claims in the specifications annexed to said letters patent upon and on consideration of which said letters patent were granted and reissued and extended, the said complainants have secured to them the exclusive right to an open-slot buckle in combination with a flat band of iron, to be combined for and used as a tie for baling cotton, or other compressible and elastic material.

And it appearing further from the said answer of the said defendant, from the proofs and exhibits, that the said defendant, before and at the time of the filing of the said bill, and since that time,
157 has been engaged in constructing and vending to others to be used a combination of a flat band of iron in combination with an open-slot buckle, in all respects substantially the same as the combination secured to the said complainants by the said letters patent aforesaid; and that the said defendant has so combined and sold both the open-slot buckle in the exact similitude in substance and fact of the invention secured to said complainants, as well as said open-slotted buckle combined with a flat band of iron, as aforesaid, without any license or authority in that behalf from the said complainants, except such as is averred by the said defendant to have resulted from an alleged sale of the said buckles by the said complainants, The American Cotton-tie Company, limited, to other persons than the said defendant, whereby it was and is insisted by the said defendant that he acquired the right by purchase from such third persons to combine said buckles with flat bands of iron and sell the same in competition with the owner of said invention. And it appearing to the court that the said complainants, in the protection of their rights and property in said patented invention, did not dispose of said cotton-tie buckles in full property, but with a condition that the same should only be used once for the purpose of baling cotton or other compressible material, and that the said condition was know' to the said defendant, the said condition being stamped in a permanent manner on the said buckles, and that the contract by which said cotton-ties and buckles was disposed of for use by the said American Cotton-tie Company, Limited, contained the same condition and stipulation as stamped on said cotton-tie buckle nd that said license to use the said open-slot buckles and a combination of such open-slot buckles with a flat band of iron as a cotton-tie had, on the terms on which it had been granted by the said American Cotton-

tie Company, Limited, expired and been expended before the same came in posses'ion of the said defendant, and that the sale of
158 the said open-slot cotton-tie known in the trade as "Arrow ties," and the sale of said open-slot buckles in combination with a flat band of iron to be used as a tie for baling cotton or other compressible and elastic materials, is a substantial invasion and infringement of the right and property of the said claimants as secured to them in said letters patent, and that the restraining order heretofore granted in this cause was properly allowed and granted.

Now, therefore, it is ordered and decreed that a writ of injunction in due form of law do issue against the said defendant as prayed for in said bill of complaint, and that the said defendant be, and is hereby, inhibited and restrained, both himself, his agents, servants, attorneys, and workmen, from directly or indirectly making, constructing, using, vending, delivering, making, or putting into practice or use, or in any wise counterfeiting or imitating the said invention set forth and described in the said bill of complaint and the letters patent therein set forth, and particularly from the use, sale, or vending to other' for use any open-slot cotton-tie buckle of the kind, description, or character commonly known as the "Arrow tie," described and set forth in and secured by any of the letters patent, set forth in said bill of complaint, upon the pretense that the same has at any former time been sold by the said American Cotton-tie Company or its agents, and been once used for the purpose of baling cotton or other material before coming into the possession of the defendant, and from combining any such open-slot cotton-tie buckles with a flat band of iron, to be used, or vended to others to be used, as a tie for baling cotton or other elastic or compressible material, and that the said defendant, his agents, attorneys, servants, and workmen, do so remain enjoined and inhibited until the final hearing of this cause or until the further order of the court in the premises.

(Signed) EDWARD C. BILLINGS,
Judge.

159 *Writ of injunction.—Issued November 24th*, 1876.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth judicial circuit and district of Louisiana.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al.,
vs.
CHARLES W. CHAPMAN.
} No. 7930.

The President of the United States to Charles W. Chapman, greeting

Whereas it has been represented to us in our said circuit court, on the part of the American Cotton-tie Company, Limited, James J. McComb, administrator of the estate of Mary F. McComb, and James J. McComb, Charles G. Johnson, and Emerson Foote, by their bill of complaint lately exhibited against you, Charles W. Chapman, touching certain matters and things therein set forth:

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you the said Charles W. Chapman, your agents, servants, attorneys, and workmen, and each of you, are hereby

commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from directly or indirectly making, constructing, using, vending, delivering, making, or putting into practice or use, or in any wise counterfeiting or imitating the invention set forth and described in the said bill of complaint and the letters patent therein set forth, and particularly from the use, sale, or vending to others for use, any open-slot cotton-tie buckle of the kind, de-
160 scription, or character commonly known as the "Arrow tie," described and set forth in and secured by any of the letters patent set forth in the said bill of complaint, upon the pretense that the same has at any former time been sold by the said American Cotton-tie Company or its agents, and been once used for the purpose of baling cotton, or other material, before coming into the possession of you, the defendant, and from combining any such slot cotton-tie buckles with a flat band of iron to be used, or vending to others to be used, as a tie for baling cotton or other elastic or compressible material, and that you, the said Charles W. Chapman, your attorneys, servants, and workmen, do so remain enjoined and inhibited until the final hearing of this cause, or until the further order of the court in the premises.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 24th day of November, A. D. 1876.

[SEAL.] (Signed) F. B. VINOT,
Deputy Clerk.

Marshal's return.

Received November 24th, 1876, by the U. S. marshal, and on the 25th day of November, 1876, served a copy of the within injunction on Charles W. Chapman, at his domicil, No. 284 Hospital street, in the city of New Orleans, by handing the same to Mrs. W. F. Chapman, a person of lawful age.

(Signed) J. R. G. PITKIN,
U. S. Marshal,
By E. S. CURRY,
Deputy Marshal.

161 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis B. Vinot, deputy clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 53 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial, in the case of The American Cotton-tie Company, Limited, et als., v. Charles W. Chapman, No. 7930 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 25th day of November, A. D. 1876.

[SEAL.] (Signed) F. B. VINOT, *Clerk.*

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

I, Willard F. Warner, deputy clerk of the fifth circuit court of the United States for the southern district of Georgia, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office, being the bill, answer, replication, notice of motion for injunction, affidavits of S. S. Carlisle, Frederic Cook, Wm. H. Warren, Franklin B. Parkinson & J. J. McComb, decree for temporary injunction, injunction, and return of service in the suit now pending in said court between The American Cotton-tie Co., Limited, et als., complainants, and C. W. Simmons & Co., defendants.

In witness whereof I have caused the seal of the said court to be hereunto affixed, at the city of Savannah, in the southern district of Georgia, this tenth day of May, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and first.

[SEAL.] WILLARD F. WARNER,
Deputy Clerk.

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

I, John Erskine, judge of the district court of the United States for the southern district of Georgia, do hereby certify that Willard F. Warner, who signed the within certificate, is, and was at the time of signing the same, the clerk of the district and circuit courts of the United States for the southern district of Georgia; that full faith and credit ought to be given to his acts and attestations given as such,
163 and that his said certificate and authentication of the foregoing transcript is in due form.

In witness whereof I have hereto set my hand this 10th day of May, in the year of our Lord one thousand eight hundred and seventy-seven.

JOHN ERSKINE,
Judge of the District Court of said District.

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

I, Willard F. Warner, deputy clerk of the circuit court of the United States for the southern district of Georgia, do hereby certify that John Erskine, esquire, who signed the within certificate, is, and was at the time of signing the same, a judge of the circuit court of the United States for the southern district of Georgia, duly commissioned and qualified, and that full faith and credit ought to be given to his acts and attestations given as such.

In witness whereof I have hereto set my hand and the seal of said court this 10th day of May, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] WILLARD F. WARNER,
Deputy Clerk of said Court.

(The bill in this suit is the same as in the Chapman suit, supra.)

164 *Separate answer of Charles W. Simmons.*

In the district court of the United States for the southern district of Georgia.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al., complainants,
and
C. W. SIMMONS AND COMPANY, DEFENDANTS. } In equity.

To the honorable the judge of the fifth circuit court of the United States for the southern district of Georgia:

The separate answer of Charles W. Simmons to the bill of the American Cotton-tie Company, Limited, et al.

And this defendant, saving and reserving to himself all right of exception as to all the matters contained in said bill, for answer thereto, or to so much thereof as he is advised to be material to be answered unto, says:

This defendant is informed and believes that letters patent of the United States were granted to Frederic Cook for an improvement in metallic ties for cotton-bales, dated March 2d, 1858, and he is therefore informed and believes that the disclaimer set forth in said bill was filed in the Patent Office as in said bill stated. But this defendant has no knowledge, save as informed by the bill of complaint, as to the several adjudications upon the patent of said Cook which are set forth in said bill, and leaves the complainants to prove the same as they may be advised.

165 And this defendant is informed and believes that the said Cook patent was extended as set forth in said bill, but whether said patent was, on the 22d day of March, 1872, assigned to James J. McComb this defendant is ignorant.

And this defendant is informed and believes that letters patent were, on the 22d day of March, 1859, granted to George Brodie for an improvement in metallic bands for baling, as set forth in said bill.

He is also informed and believes that said letters patent were surrendered and reissued on the 27th day of April, 1869, as in said bill stated, but whether said letters patent were, on the 19th day of March, 1873, assigned to the said James J. McComb this defendant is ignorant; neither does he know, except as informed by said bill, whether said letters patent were again surrendered or reissued on the 25th of March, 1873; and this defendant is ignorant whether James J. McComb, Charles G. Johnsen, and Emerson Foote formed a special copartnership, under the name of The American Cotton-tie Company, on the 21st of March, 1873, and he is ignorant whether the said McComb did sell to said firm the said letters patent granted to the said Cook and the letters patent granted to the said Brodie, as alleged in said bill, but leaves the complainants to prove the same as they may be advised.

And this defendant is informed and believes that letters patent of the United States were, on the 29th of January, 1861, granted to James J. McComb for an improvement in iron ties for cotton-bales, but he is ignorant whether an assignment of the same was made to Mary F. McComb, as in said bill alleged. Neither is he informed, save by said bill, whether said Mary F. McComb died intestate or whether the said James J. McComb was appointed administrator upon her estate.

And this defendant does not know and is not informed, save by said

bill, whether on the 31st of December, 1875, by the proper registration of a memorandum of association and of articles of association, the corporation under the name of "The American Cotton-tie Co., Limited," was organized under the laws of the United Kingdom of Great Britain and Ireland.

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Neither does he know that the corporation was organized by the consent and approval of James J. McComb, Charles G. Johnsen, and Emerson Foote; neither does he know whether the several letters patent in said bill mentioned were assigned and conveyed to the said corporation of "The American Cotton-tie Co., Limited," nor whether said company is now the owner of said letters patent, and possessed of the sole and exclusive right, title, and interest in and to the same, as in said bill alleged, and leaves the complainants to prove the same as they may be advised.

And this defendant denies that he has, in violation of the right of the complainants and in infringement of the aforesaid letters patent, or any of them, within this district or elsewhere, unlawfully and wrongfully made, constructed, used, and vended to others to be used the said inventions; and denies that he has made, constructed, used and vended to others to be used metallic ties for cotton-bales which were made according to and employed and contained the said several patented inventions as charged in said bill, in violation of any right which the said complainants have in the premises.

And the said defendant denies every allegation of infringement upon the rights of said complainants under the said letters patent in said bill of complaint contained.

All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct; and he prays that he may be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

HARTRIDGE & CHISOLM,
Solicitors for Defendants.

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UNITED STATES OF AMERICA,
Southern District of Georgia:

On this 29th day of January, 1877, personally appeared the above-named C. W. Simmons, and made oath that the foregoing answer is true, except as to matters stated on information and belief, and as to the same he believes it to be true.

C. W. SIMMONS.

Sworn to and subscribed before me this 29th day of January, 1877.
[SEAL.] W. M. MOORE,
U. S. Commissioner for the Sou. Dist. of Ga.

Notice of motion for injunction.

Circuit court of the United States for the southern district of Georgia.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al.,
vs.
C. W. SIMMONS & CO.
} In equity.

To the defendants, C. W. Simmons & Co.:

Please take notice that on Thursday the 12th day of April, A. D. 1877, at 10 o'clock a. m. on said day, or as soon thereafter as counsel can be

heard, the complainants in the above-entitled cause will move the circuit court of the United States for the southern district of Georgia, to be held at the city of Savannah, for an injunction to the extent and effect as prayed for in this bill of complaint.

Said motion will be based on the bill exhibited on file, the
168 pleadings, orders, decrees, affidavits, exhibits, and evidence produced by the complainants and of record in said court in the case of The American Cotton-tie Company, Limited, et al., vs. Groover, Stubbs & Co., and such further proof and exhibits as shall be filed in said cause on or before the 3d day of April, 1877.

F. F. HOGE,
Sol. for Complainants.

Affidavit of S. S. Carlisle.

United States circuit court, fifth circuit and southern district of Georgia.

THE AMERICAN COTTON-TIE COMPANY, LIMITED,
vs.
G. W. SIMMONS & CO.

Samuel S. Carlisle, being first duly sworn, deposes and says that he is of lawful age and resides in the city of New Orleans, and is by occupation an attorney at law. That from about August 15th, 1871, to August, 1875, he was engaged with Messrs Bartlett & Rayne, general agents of The American Cotton-tie Company, and R. W. Rayne & Co., successors to Bartlett & Rayne, during which period his time was occupied as correspondent and invoice-clerk, and that all the bills for Arrow cotton-ties made out by him for the season of 1873, 1874, and 1875 contained a stipulation that the said Arrow ties were sold for use once only.

SAM'L S. CARLISLE.

Sworn to and subscribed before me this sixteenth day of January, A. D. 1877.

[L. S.] J. G. EUSTIS,
U. S. Commissioner, District of Louisiana.

169 *Affidavit of Frederic Cook.*

Circuit court of the United States for the fifth circuit and southern district of Georgia.

AMERICAN COTTON-TIE COMPANY, LIMITED,
vs.
C. W. SIMMONS & CO.

Frederic Cook, being duly sworn, deposes and says that some time previous to the filing of the bill in this cause, being in Augusta, Georgia, he called on C. W. Simmons at his shop and notified him that he was infringing the rights of The American Cotton-tie Company under their patents by selling Arrow and other open-slot buckle-ties without license, on pieced, bands, as cotton-ties. That he called his attention to the stamp on the Arrow buckles sold by said American Cotton-tie Company of "Licensed for use once only," and denied the right of said

Simmons to gather up such Arrow buckles after being once used on bales of cotton, and again put them upon the market in violation of the stamped license.

That Simmons acknowledged putting up pieced bands with Arrow buckles, and said he used both stamped and unstamped buckles, just as they came to his hand.

FREDERIC COOK.

Sworn to and subscribed before me this 25th day of January, 1877.
[L. S.] J. A. BELL,
Not. Pub., R. Co., Ga.

170 *Affidavit of Wm. H. Warren.*

Circuit court of the United States for the fifth circuit and southern district of Georgia.

AMERICAN COTTON-TIE COMPANY, LIMITED.
vs.
C. W. SIMMONS & CO.

STATE OF GEORGIA,
County of Richmond, ss:

William H. Warren, being first duly sworn, deposes and says, that on the twenty-fifth day of January, 1877, C. W. Simmons, one of the defendants in above cause, told "deponent that during the past season he had been engaged making and bundling up for sale what are known as pieced ties; that he had put up and sold about fifteen hundred bundles; that his agents were the firm of J. O. Mathewson & Co., of Augusta, Georgia; that the bundles of pieced ties he prepared for sale had on principally 'Arrow buckles,' which he said were the most salable; that he remembered Mr. F. Cook calling on him and notifying him that The American Cotton-tie Company would institute legal proceedings against him if he continued to put up and sell pieced ties with Arrow buckles on; that he paid no attention to the 'license stamp' on the buckles, as his attorney had informed those interested with him that the complainants in this cause could not legally sustain their rights in the courts to dispose of the said Arrow buckles for use once only, even if so stamped."

171 That deponent is familiar with the Arrow tie buckle, and is one of the firm of Warren, Wallace & Co., of Augusta, the agents of complainants (in that city), who are the owners of the patents under which the Arrow tie is made and sold; that the buckle marked Exhibit A, annexed hereto, is a genuine Arrow tie buckle, and is stamped "Licensed for use once only," "pat. 58 & 61," and is a fac simile of the Arrow tie buckles as sold by complainants; that the Arrow tie buckles that he has seen on the Augusta market for sale, put up and prepared by said Simmons, are exactly similar in all respects to Exhibit A annexed hereto. Furthermore, that the said C. W. Simmons has been engaged for several years past in the preparation for market and disposing of pieced ties with Arrow buckles on; that he has received notice several times from representatives of the owners of the patents to cease, but that he has persisted in his course, to the great injury of complainants and their predecessors, owners of the Arrow tie patents.

That the below advertisement was put in the newspaper published in Augusta, Georgia, called the Chronicle and Sentinel, and was inserted August 1st, 1876, and was in twice a week for three months thereafter.

That said advertisement was inserted at request of The American Cotton-tie Company, Limited, the complainants in this cause. That the below advertisement is cut out of said newspaper and is marked Exhibit B.

WILLIAM H. WARREN.

Sworn to and subscribed before me this 25th day of January, 1877.

[SEAL.] J. A. BELL,
Not. Pub., R. Co., Ga.

172 EXHIBIT A.

Sample of arrow-tie buckle attached to affidavit.

EXHIBIT B.

To merchants, planters, and dealers in cotton-ties:

Please take notice that this company owns and controls the following United States patents for improvements in bale-ties:

No. 31252, dated April 29th, 1861, and extended to James J. McComb.

No. 19490, dated March 2d, 1858, and extended to Frederic Cook.

No. 5533, reissued March 27th, 1873, extended March 22d, 1873, patented by George Brodie.

No. 5404, reissued May 13th, 1873, patented by R. M. McClintock.

No. 603, reissued Sept. 8th, 1873, patented by W. J. Carroll.

That we hereby notify you not to infringe any of the before-named patents, by making, using, or selling any cotton-bale ties in violation of our rights secured to us under above patents, under penalty of law.

Our Arrow and slide-slot ties are furnished only by this company, through its authorized agents, and are sold licensed for use once only as baling-ties, the buckles being so stamped.

Any parties selling or dealing in ties covered by the above patents and not licensed by us will be violating our rights and treated accordingly.

For the American Cotton-tie Company, Limited.

F. COOK,
General Legal Agent.

WARREN, WALLACE & CO.,
Agents, Augusta, Georgia.

[Aug. 1—2aw3m.]

173 *Affidavit Franklin B. Parkinson.*

United States circuit court, fifth circuit and southern district of Georgia.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et als.,
vs.
C. W. SIMMONS & CO.

DISTRICT OF LOUISIANA, *ss:*

Franklin B. Parkinson, being first duly sworn, deposeth and saith that he is bookkeeper for R. W. Rayne & Co., general agents of the

American Cotton-tie Company, Limited, and of his own personal knowledge knows that the bill-heads used by the company and their agents have had printed on them a clause licensing the buckles disposed of by them "for use once only."

That in 1873, and since to the year 1876, the following words were printed on the bill-heads: "The cotton-ties included in this invoice are licensed to be used once only as bailing-ties, and are sold and purchased subject to this restriction." (Exhibit A.) That in 1876 the following words were used: "Each bundle of cotton-ties charged in this invoice consists of thirty bands. The buckles accompanying these bands are the property of the American Cotton-tie Company, Limited, and are licensed to be used for one season only; the company reserving the right after such use to recover possession of them wherever found." (Exhibit B.) Deponent further says that the buckles themselves are and have been for several years past stamped with the words, "Licensed to use once only." That he is well acquainted with the
174 business of the American Cotton-tie Company, Limited. That the business of the said company is the sale of the cotton-tie for baling cotton known as the Arrow tie, secured to said company by letters patent of the United States described and set forth in the bill of complaint in the above-entitled cause.

That the cotton-tie buckles manufactured under said letters patent and sold by said company are the same as heretofore annexed, and are secured to said complainants by said letters patent set forth in said bill of complaint, and duly executed assignments.

F. B. PARKINSON.

Sworn to and subscribed before me on this 28th day of March, A. D. 1877.

[SEAL.] J. G. EUSTIS,
United States Commissioner for the District of Louisiana.

EXHIBIT A.

[The cotton-ties included in this invoice are licensed to be used once only as baling-ties, and are sold and purchased subject to this restriction.]

NEW ORLEANS, , 18 .

M , bought of The American Cotton-tie Company, R. W. Rayne & Co., general agents, No. 23 Union and 48 Carondelet streets:

[CUT.]

	Bdles. 11 ft.	Ties, lb. @	

175 EXHIBIT B.

[Each bundle of cotton-ties charged in this invoice consists of 30 bands. The buckles accompanying these bands are the property of the "American Cotton-tie Company Limited," and are licensed to be used for one season only; the company reserving the right after such use to recover possession of them wherever found.]

MEMPHIS, , 187 .

M , bought of The American Cotton-tie Company, Limited, per M. L. Meacham & Co., agents, No. 9 Union street:

Per cent. discount for cash.

[CUT.]

Bdles. 11 ft.	Ties, @

176 *Affidavit of J. J. McComb.*

United States circuit court for the fifth circuit and southern district of Georgia.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al.
vs.
C. W. SIMMONS & CO.

DISTRICT OF LOUISIANA, *ss:*

James J. McComb, being first duly sworn, deposeth and saith that he is one of the complainants named in the bill of complaint herein. That he is well acquainted with the history and character of the inventions set forth and described in the letters patent aforesaid. That the manufacture of said invention and the disposal of the same for use in baling cotton has been largely under the control of this deponent since the date of the first production of said invention under the protection of said letters patent. That the said title of and to said patents as set forth in said bill of complaint, in so far as it shows the several persons and copartnerships who have owned and operated the same, is true as set forth in said bill of complaint. And he further saith that to his own knowledge no persons, corporation, or partnership, other than the agents of the said patentees and assigns, have had any license or authority to make, construct, or vend to others either any of said open-slot cotton-tie buckles or cotton-ties composed of the combination of such buckles with a band of iron; that the said owners of said letters patent have at all times allowed the manufacture of said inventions only for themselves, to be disposed of by them or their agents, and that the manufacture of any of said open-slot buckles, or the combination of such buckle with a flat band of metal, by any other persons, is, and at all times has been, in violation of the rights of said owners of said letters patent and inventions. That the said defendants are not and never have been the agents of said complainants or their assigns, and have never had any right or authority to use, make, construct, or vend to others to be used any of said inventions described and secured in any of said letters patent.

177

J. J. McCOMB.

Sworn to and subscribed before me this 30th day of January, 1877.
[L. S.] J. G. EUSTIS,
United States Commissioner, District of Louisiana.

Decree for temporary injunction.

In the circuit court of the United States, for the southern district of Georgia.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et. al.,
vs.
C. W. SIMMONS & CO. } In equity.

And now, on this thirteenth day of April, A. D. 1877, the above-stated cause came on to be heard on motion for special injunction, upon bill and affidavits, and the parties complainant and defendant being represented with hearing by their counsel, E. F. Hoge for complainants, and Hartridge & Chisolm for defendants, it is considered and
178 adjudged that the defendants be enjoined from selling, making, or using, directly or indirectly, the inventions set out in complainants' bill, or making, using, or vending to others to be used buckles for iron ties or cotton-bales, known in the market as "Arrow buckles;" or ties formed by combination of an iron band with an open-slot buckle, or "Arrow buckle," except the same be purchased from or licensed by said complainants, their assignees, or their vendees or licensees, until the final hearing of said cause, or the order of said court or the judge thereof.

But the said injunction shall not issue till complainants, the American Cotton-tie Company, Limited, shall enter into bond, with good security, in the sum of two thousand dollars, payable to the defendants, conditioned to pay said defendants all damages they may sustain in consequence of the issuance of said injunction, the sureties to said bond to justify before the clerk of this court.

JOHN ERSKINE, *Judge.*

In open court, April 13th, 1877.

179 *Temporary injunction.*

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

THE AMERICAN COTTON-TIE CO., LIMITED, et al., complainants,
vs.
C. W. SIMMONS & CO., DEFENDANTS. } In equity.

The President of the United States of America to Charles W. Simmons and Simon W. Simmons, copartners using the firm-name of C. W. Simmons & Co., and to their counsellors, attorneys, solicitors, and agents, and to their clerks, employees, and all other persons, greeting:

Whereas it has been represented to us in our circuit court of the United States for the southern district of Georgia, on the part of the American Cotton-tie Company, Limited, et al., complainants, that they have lately exhibited their bill for injunction and relief in our said circuit court for said district against you, the said Charles W. Simmons and Simon W. Simmons, copartners as aforesaid, to be relieved touching the matters therein complained of in which bill it is stated, among other things, that you are combining and confederating with others

to injure the said complainants touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience;

We, therefore, in consideration thereof and of the particular matters in said bill set forth, do strictly command, and until the further order of the court strictly enjoin you, the said Charles W. Simmons
180 and Simon W. Simmons, copartners as aforesaid, and all other persons whomsoever, and each and every of you, under the pains and penalties which may fall upon you and each of you in case of disobedience, that you do absolutely desist and refrain from selling, making, or using, directly and indirectly, the inventions set out in complainants' bill, or making, using, or vending to others to be used buckles for iron ties for cotton-bales known in the market as "Arrow buckles" or ties, formed by combination of an iron band with an open-slot buckle, or "Arrow buckle," except the same be purchased from or licensed by said complainants, their assignees, or their vendees or licensees, until the final hearing of said cause or the order of said court or judge.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Savannah, in said district, this the 16th day April, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] WILLARD F. WARNER,
Deputy Clerk.

Return of service.

I hereby depute J. W. Judkins to serve the within process.
U. S. marshal's office, Savannah, Ga., April 14th, 1877.

W. H. SMYTH,
U. S. Marshal,
By C. P. FREEMAN, *Deputy.*

I hereby certify that I have, this 18th day of April, 1877, served a copy of the within injunction upon Charles W. Simmons, per-
181 sonally, at Augusta, Ga., at nine o'clock in the a. m.; after due and dilligent search, I find that the within-named Simon W. Simmons is not to be found in my district.

$19.90.

Return of—

W. H. SMYTH,
U. S. Marshal.
Per J. W. JUDKINS,
Special Deputy U. S. M.

182 *Compl'ts' Exhibit Bill Head A.*

NEW YORK, 187 .

[Cut.]

M bought of American Cotton-tie Co., Swenson, Perkins & Co., agents, No. 80 Wall street:

Terms "cash."

The cotton-ties included in this invoice are licensed to be used once only as baling-ties, and are sold and purchased subject to this striction.

183 *Compl'ts' Exhibit Bill Head B.*

[Each bundle of cotton-ties charged in this invoice consists of 30 bands. The buckles accompanying these bands are the property of the "American Cotton-tie Company, Limited," and are licensed to be used for one season only; the company reserving the right after such use to recover possession of them wherever found.]

NEW YORK, 187 .

M bought of The American Cotton-tie Company, Limited, per S. M. Swenson, Son & Co., agents:

[CUT.] 2½ per cent. discount for cash.

	Bdles, 11 ft.	Ties, @	

184 Said cause was continued from term to term to the November term of said court, 1877, when it came on to be heard before judges Shipley and Knowles, upon the pleadings & proofs, and was argued by counsel & held for advisement; and at the present November term, 1878, the following opinion was filed in said cause:

Circuit court of the United States, district of Rhode Island.

THE AMERICAN COTTON-TIE COMPANY }
vs.
SIMON W. SIMMONS ET AL. }

Opinion of the court.—Filed June 15th, 1878.

June term, 1878.

SHIPLEY, J.:

The complainants are engaged in the manufacture and sale of a patented buckle for use in connection with an iron strap for a tie or

fastening to cotton-bales. There can be no reasonable doubt that cotton-ties sold by defendants are covered by the patents under which complainants claim. Nor does the evidence in this case leave any reasonable doubt that the buckles sold by the defendants are the identical buckles made and sold by the complainants under their patent. The
complainants contend that they sold the buckles under a restric-
185 tion which limited them to one use, and did not convey an unrestricted title, and that the buckles never passed out of the monopoly of the patent. The facts are that the complainants sold the patented buckles with the words printed on them, "Licensed to use once only," and that up to the season of 1876, on the bill-heads and invoices of all their agents were the words, "The cotton-ties sold by this invoice are licensed to be used only as baling-ties, and are sold and purchased subject to this restriction." During the season of 1876 the following clause was printed on their bills: "The buckles accompanying these bands are the property of the American Cotton-tie Company, Limited, and are licensed to be used for one season only, the company reserving the right after such use to recover possession of them wherever found." The company clearly had the right in selling a patented article to put a restriction on its use or sale, and to convey only a restricted title, or to license only a restricted use, and the purchaser under such a restricted title could not convey a greater or better title than he had himself. The law upon this subject was fully stated in Hawley vs. Mitchell, 1 Holmes, 42, and affirmed by the Supreme Court of the United States, 16 Wall, 544. But when the proprietors of a patented article sell it for the purpose of allowing it to be used in ordinary pursuits of life and to pass into the market of the country as an ordinary article of commerce, and subject to the unrestricted purchase and sale, he waives his right to affix conditions or restrictions to its use or sale, and consents that after one sale and the payment of one
royalty it shall pass out of the limits of the monopoly. If a
186 manufacturer of patented pins, or nails, or wood-screws, or any similar article, were to affix to his invoice of sale a condition limiting them to one use, and sell them in quantities to retail dealers to be sold again, he must know and intend that they are to pass into the commerce of the country and to be sold over and over again, and sold only to persons who would not buy anything less than an unrestricted title. Shall the purchaser of a packing-box be treated as an infringer and as pirating an invention because he uses again and for another purpose the screws or nails which held the box together, and which he purchased when he purchased the box and its contents? May he not reasonably presume, with regard to articles of this description, that pins, and nails, and screws do not go into the market with an incumbrance upon their title or a restriction on their use, and that he is not bound to trace the title to see if it be unrestricted, for the reason that he may well suppose no one would expect to affix a restriction on the use of such articles which would be operative, or if he could do so would ever find purchasers of them? The buckles sold by the complainants belong to this class of articles. They are sold for the purpose of being used to confine a bale of cotton, as a nail or screw confines a packing-box. It appears in evidence that when a bale of cotton is sold it is without tare, and consequently the buckle and the strap it confines are sold and resold with the bale of cotton to which they are attached. If the cotton takes fire or is otherwise damaged and requires to be rebaled, must the owner put the same buckle back on the same bale or be liable to the penalties of an infringer?

187 When the cotton-bales are opened for use at the factories, the manufacturer who has purchased the ties and buckles with the cotton, having no further use for them, sells them to the junk-dealer. From the junk-dealer the defendants purchase them and repair them and sell them again. The vendor of the patented buckle sells them to be applied to the bales of cotton with the full knowledge that they will be sold and resold as often as the cotton is sold. They impliedly consent to these unrestricted sales. They cannot under such circumstances be fairly considered as retaining the title to the buckles in themselves, or as parting only with such a restricted title as would require each vendor of the cotton to sell it accompanied with a restriction on the title and use of the buckles. The very purpose of the original sale, with the knowledge of the subsequent use and sales necessarily incident, imply a parting with the unrestricted title and a passing out of the limits of the monopoly of the thing sold, as much as it would if the vendor sold patented thread, nails, or screws to be used in fastening packing-cases to be sold with the goods packed.

The facts in this case show that the owners of the patented buckle intended and contemplated that the purchasers should sell an unrestricted title, inconsistent with any reservation of title or use in the original vendors. Such a sale does not fall within the principle as stated in Hawley vs. Mitchell, but clearly falls within the language and principle of the decisions in Goodyear vs. Beverly Rubber Co., 1 Cliff., 336, and Washing Machine Co. vs. Earle, 3 Wall., p. 320.

188 The case is very different from that of the sale of a machine easily identified and to which a restriction may easily be attached, or where a license to use only may be sold, unaccompanied with any title or accompanied with a restricted title. But when pins, nails, screws, or buckles are sold, if some of them are sold with a restricted and some with an unrestricted title, there are no means of identification which enable the purchaser, after they have passed into the market and common use, to distinguish the articles licensed or restricted in their use from those absolutely sold. In the case of articles of that description the patentee may fairly be presumed to have received his royalty when he parted with the possession of the articles and allowed them to go into common and general use. The public should not be vexed with litigation about reserved rights or conditions affixed to the title of such articles, or put upon the investigation of incumbrances or restrictions on the title of nails, screws, buckles, or pins, before they can be safely used by a person who has bought them of parties who obtained them of the patentee with the right to sell them in the open market. It is more for the interest of inventors that they should obtain their royalty on such articles when they first put them upon the market than to make the monopoly odious by the attempt to fix restrictions on the subsequent use.

Bill dismissed with cost.

189 Whereupon, on the eighth day of said June term, 1878, the following decree was entered:

Final decree.

And now, on this fifth day of August, A. D. 1878, this cause having been heard upon bill, answer, and proofs, and argued by counsel for the respective parties, and duly considered by the court, it is now hereby ordered, adjudged, and decreed that the bill of complaint in the said

cause be dismissed, and that the plaintiffs pay to the defendants their costs in said suit, to be taxed by the clerk.

By order of court.

HENRY PITMAN,
Clerk U. S. Cir. Ct, R. I. Dist.

From which decree said complainants, in open court, gave notice of an appeal to the Supreme Court of the United States.

190 United States circuit court, district of Rhode Island.

THE AMERICAN COTTON-TIE COMPANY, LIMITED, et al.,
vs.
S. W. SIMMONS ET. AL. } In equity.

It is hereby agreed that the record in the above case shall consist of the bill, answer, replication, opinion and decree, the depositions on behalf of the complainants and defendants, and the patents, assignments, certificate of extension, and certificate of registration, printed on the first thirty pages, "Record of Chapman's suit, New Orleans," printed on pages 125 to 191, inclusive, and "C. W. Simmons & Co. record," and Compl'ts Exhibits Bill Head A and B, printed on pages 225 to 246, inclusive, of Complainants' Exhibit, a copy of which is hereto attached, and of no other papers.

SAM'L A. DUNCAN,
Sol'r for Complainants.
B. F. THURSTON,
Sol'r for Defendants.

JULY 25TH, 1878.

191 UNITED STATES OF AMERICA,
District of Rhode Island, ss:

CLERK'S OFFICE, CIRCUIT COURT,
Providence, August 15th, 1878.

I, Henry Pitman, clerk of the circuit court of the United States for the first circuit and district of Rhode Island, do hereby certify that the foregoing one hundred and ninety pages contain a true transcript of the record and proceedings in said court in the cause in equity "American Cotton-tie Company, Limited, et al., vs. Simon W. Simmons et al.," now of record in this office.

In testimony whereof I have hereunto set the seal of said court and my hand this 15th day of August, A. D. 1878.

[SEAL.] HENRY PITMAN,
Clerk U. S. Cir. Ct, R. I. Dist.

192 Know all men by these presents that I, Frederic Cook, of the city and county of New York and State of New York, am held and firmly bound unto Simon W. Simmons, C. W. Simmons, and W. W. Simmons in the sum of five hundred dollars, to be paid to them, their executors and administrators, jointly and severally, by these presents. Sealed with my seal and dated this twenty-fourth day of September, 1879.

Whereas in a suit in equity lately pending in the circuit court of the United States for the district of Rhode Island, in which the American

Cotton-tie Company, Limited, and others were complainants, and the said Simon W. Simmons, C. W. Simmons and W. W. Simmons were defendants, a decree was entered and filed in the office of the clerk of said court on the 5th day of August, 1878, in favor of the defendants therein, dismissing the bill of complaint; and

Whereas the complainants have taken an appeal to the Supreme Court of the United States to reverse the said decree:

Now, therefore, the condition of the above obligation is such that if the said appellants shall prosecute the said appeal to effect, and shall pay all costs if the said decree be affirmed, then this obligation to be void, otherwise to remain in full force and virtue.

FREDERIC COOK. [SEAL.]

Sealed & delivered in presence of—
SAM'L. A. DUNCAN,
BENJ. A. SMITH.

Approved by—

JOHN P. KNOWLES,
Judge of U. S. Dist. Court for Dist. of R. I.

193 The above bond is satisfactory to defendants.

B. F. THURSTON,
Of Counsel.

DISTRICT OF RHODE ISLAND, *ss:*

CLERK'S OFFICE CIRCUIT COURT,
At Providence, Oct., 2d, 1879.

I, Henry Pitman, clerk of said court for said district, do hereby certify that the above and foregoing two pages contain a true copy of the original now on file in this office in the cause in equity The American Cotton-tie Company, Limited, v. Simon W. Simmons, C. W. Simmons, and W. W. Simmons, duly examined and compared.

In testimony whereof I have hereunto set the seal of said court and my hand this second day of October, A. D. 1879.

[SEAL.] HENRY PITMAN, *Clerk.*

(Indorsement on cover:) No. 312. The American Cotton-tie Company (Limited), James J. McComb, adm'r of Mary F. McComb, dec'd, et al., appellants, vs. Simeon W. Simmons, C. W. Simmons, & W. W. Simmons. R. Island C. C. U. S. Filed 10th October, 1879.

16-89

Supreme Court of the United States.

No. 47.

(**October Term, 1882.**)

The American Cotton Tie Company, Limited, J. J. McComb, et als.,

Appellants,

vs.

Simeon W. Simmons, C. W. Simmons, and W. W. Simmons,

Appellees.

IN EQUITY.

BRIEF FOR APPELLANTS.

S. A. DUNCAN,

Of Counsel.

New York:
Livingston Middleditch, Printer, 20 Courtlandt St.
LAW TELEPHONE No. 505.

1882.

Supreme Court of the United States.

No. 47.

THE AMERICAN COTTON TIE COMPANY (Limited), JAMES J. MCCOMB, administrator of the Estate of MARY F. MCCOMB, JAMES J. MCCOMB, CHARLES G. JOHNSEN and EMERSON FOOTE, Appellants,

vs.

SIMEON W. SIMMONS, C. W. SIMMONS and W. W. SIMMONS, Appellees.

Brief for Appellants.

Statement.

This is a suit in equity, appealed from the Circuit Court of the United States for the District of Rhode Island.

The suit was brought by the appellants for an injunction and account for the alleged infringement of three several letters patent relating to metallic ties for cotton bales, owned at the time by the corporation complainant, viz:

1. THE COOK PATENT; No. 19,490, granted FREDERIC COOK March 2, 1858, and extended for seven years from March 2, 1872.

2. THE BRODIE PATENT; granted GEORGE BRODIE March 22, 1859, extended for seven years from March 22, 1873, and reissued to James J. McComb, assignee, March 25, 1873, as No. 5,333.

3. THE MCCOMB PATENT; No. 31252, granted JAMES J. MCCOMB January 29, 1861, and extended for seven years from January 29, 1875.

The Bill alleges the grant and the validity of these several patents; the various adjudications had under the Cook patent, and the acquiescence of the public as to the others; the organization, on or about January 1, 1876, of the corporation complainant, the American Cotton-Tie Supply Company; the assignment of the patents to the said company by the former owners thereof, the co-complainants, together with all claims and demands for damages and profits arising from the prior use of the inventions; and that the defendants, organized as the Providence Cotton-Tie Company, have, without license, made, used and vended to others to use, metallic ties for cotton bales embodying the patented inventions.

The Answer does not question the validity of the patents; nor does it deny complainants' title in them. It does, however, deny that defendants have made, used and vended to others to be used the said patented inventions, "without the license of said complainants."

At the hearing, defendants, admitting the sale of metallic cotton-ties in all substantial respects like those made and sold by complainants under their patents, claimed that the goods which they thus sold had been manufactured by them out of spent ties previously made and sold by complainants; that they, the defendants, had simply bought

the remains of these old ties from cotton-mills and junk-shops and converted them into merchantable goods by a process of repair; and that thus, assuming the original sale by the complainants to have passed the goods outside the monopoly of the patents, defendants were but exercising a common right.

The court found that the ties made and sold by defendants were "covered by the patents under which "complainants claim;" but it also found as fact that defendants had procured the material out of which they made the ties complained of from the scrap heaps of the cotton mills; that the ties were made by reworking such material; that the buckles thus used were "the identical buckles made and "sold by the complainants under their patent"; and that complainants in disposing of the original ties of which those buckles had once formed a part had in fact sold them "without restriction" upon the right of use. The court accordingly held the acts and doings of defendants to be outside the dominion of the patent, and dismissed the bill.

In this action of the court below appellants claim that there were three fundamental errors:

First: They contend that, while defendants are proved to have made and sold metallic cotton-ties embodying all of the patented inventions, yet, contrary to the finding of his Honor, Judge Shepley, they have failed, whether by

proofs or presumptions, to establish the identity of their ties with those made by complainants.

Second: They contend that even if it be conceded that the ties, or parts of the ties sold by defendants, were originally manufactured by complainants, having been once used before coming into defendants' possession, it was error in the court to hold this a defense to the charge of infringement; *since the restrictions which complainants originally placed upon the use of the ties were such that defendants have no vendors with title from whom they can derive the right to use or to sell the patented inventions.*

Third: It was an error in the Court below to regard the work which defendants put upon the scrap of the cotton-mills as of the nature of *repair*, and not as *manufacture*.

Before considering these three questions, attention is invited to the patents upon which the suit is based.

THE PATENTS.

The inventions covered by the patents in suit relate to metallic ties used for baling cotton, and have been chiefly instrumental in revolutionizing the mode of putting up this staple commodity for the market, having entirely displaced the rope

which prior to these inventions was the only material used for this purpose. This change had, prior to the bringing of this suit in November, 1876, effected a saving to the public of not less than thirty millions of dollars; and the complainants are the persons through whose business skill, capital and inventive genius this grand result has come to pass.

(*McComb*, Q. 21-3, pp. 18-19.)

The iron bale-tie consists of two parts; the band of thin hoop iron which encircles the bale, and the buckle (sometimes, also, called "link," or "clasp") which confines the ends of the band after the latter has been drawn taut.

In using the iron ties, the cotton composing the bale is put into the press with a proper envelop of "bagging" and reduced to the required compass; the bands (five or six in number) are then passed around the bale, and the ends of each secured by means of the buckles; after which the bale is removed from the press and permitted to expand against the bands, the expansive force of the bale being, in some forms of tie, the efficient agent for maintaining the grip of the band upon the bars of the buckle.

The scope and relation of the several patents in suit are as follows:

The Cook Patent.

The invention set forth in the COOK PATENT consists of two divisions: (1) a special form of "clasp" or buckle, and (2) a feature of construction which

though illustrated in the patent in connection with such special form of buckle, manifestly is not limited to use in this one kind of buckle. The first division of the invention, being for a "friction clasp" or buckle, so formed that the band is "prevented slipping by friction against a certain portion of the buckle," forms the subject of claims one and two of the patent. The third claim is in these words:

> "The herein-described 'slot' cut through one "bar of clasp, which enables the end of the tie "or hoop to be slipped sidewise underneath the "bar in clasp, so as to effect the fastening with "greater rapidity than by passing the end of "the tie through endwise."
>
> (*Record*, pp. 36–7.)

This claim is not for a special form of cotton-tie buckle which, as a mere incident, has a "slot" cut through a particular bar; but it is for the use, in cotton-tie buckles, of a "slot" cut through "one bar" of the buckle—*any* one, not some particular one—and having a certain specific function in connection with the *end* of the band, viz.: to permit it to be "slipped sidewise" underneath the cross-bar under which it is to be brought in order to be properly confined. Owing to the great difficulty of manipulating the stiff iron of the band when it has to be passed through endwise, this device of the "slot" or cut in a bar of the buckle is found to be a great practical convenience, and it has contributed largely to the practical adoption of the iron tie.

The courts have uniformly held that the claim covers broadly *any form* of iron bale-tie in which the clasp or buckle has a slot cut through *any part* of it, so that by reason thereof the end of the band or hoop can be slipped underneath the bar where it is to rest with a *sidewise* rather than an endwise motion.

McComb v. Brodie, 1 Woods, 153; 5 Fish., 384.
Cook et al. v. Ernest, 1 Woods, 195; 5 Fish., 396.
McComb v. Beard, 10 Blatchf., 350; 6 Fish., 254.

In the trial of *McComb* v. *Brodie*, in New Orleans, in 1872, his Honor, Judge Woods, instructed the jury respecting the third claim of the Cook patent, as follows:

> "I say to you, therefore, that the third "claim of the Cook patent covers the open "slot in a cotton-tie buckle used for passing "the end of the tie sidewise through the slot "under the bar, no matter by what other man-"ipulations that result is obtained; and I say "to you, further, that it is not necessarily "connected with the remainder of the Cook "tie, and it covers the open slot used on other "forms of buckle for substantially the same "purpose and in substantially the same way."

The alleged infringement in *McComb* v. *Brodie* was a slotted or open-sided rectangular buckle, having a single central opening or mortise. See report of case in 5 Fish., 384. The jury found a verdict for the plaintiff.

Subsequently, in six different suits in equity, brought by Frederick Cook and James J. McComb, against various parties in New Orleans, injunctions were issued restraining the ties known as "Eureka,"

"Alligator," "Dunn," "Wallis" and "Gooch;" one of which (the "Eureka") had but a single "mortise," with a slot in the side bar or frame; three of which (the "Dunn," the "Alligator" and the "Wallis") had each two mortises, with a slot in the side bar; and one (the "Gooch") three mortises, with the slot in one of the inner cross-bars. See report of *Cook* v. *Ernest*, 5 Fish., 396.

In *McComb* v. *Beard*, *supra*, in the Southern District of New York, his Honor, Judge Blatchford, held that:

> "There is no connection between this [third] "claim and what is previously done with any "other part of the hoop, or any other part of "the clasp. The claim is, distinctly, to the use "of the slit or slot so cut, to effect the result "indicated, for the object indicated."

The Brodie Patent.

The Brodie invention is based upon the application of the Cook device, the "slot," to a special form of buckle. In using the particular form of buckle shown in the Cook patent, it was considered necessary to pass the end of the band endwise up through one of the mortises of the buckle before bending it down into the loop form; but in using the single-mortise buckle of the Brodie patent, the loop can be formed in the end of the band *before* the band is engaged with the buckle, which is much

simpler and more feasible. In both forms of buckle, however, the slot is present as an important element, in the one as well as in the other permitting the end of the band or the loop to be "slipped sidewise" underneath the bar where it is to rest instead of being passed through endwise.

The third, fourth and fifth claims of the Brodie patent, which are based upon Figs. 13, 14 and 15, are as follows:

> "3. The combination of an open slot for introducing the band sidewise, with a link having a single rectangular opening for holding both ends of a metallic band, and the band.
>
> "4. An open slotted link, when combined with metallic bands, the ends of which are turned under the link and held in position by the expansion of the bale.
>
> "5. The method of baling cotton with metallic bands and of taking up the slack of the band by bending the same at any desired point into the form of a loop and passing such loop sidewise through an open slit into the slot intended to receive it and over the bar of the clasp intended to hold it."
>
> (*Record*, pp. 39–40.)

The third claim, it will be seen, calls for Cook's "open slot," as it is denominated, but in a clasp or link (or buckle) having but a *single* central opening, capable of holding *both* ends of the band. The fourth claim also calls for Cook's open slot, but when so incorporated in a clasp or link that the ends of the band may be turned *under* the link, and thus be *held in position by the expansion of the cotton*. The fifth claim is for the special mode of manipu-

lating the band in securing it to the buckle, or, in other words, is for that construction of buckle and band which permits the specified manipulation.

The McComb Patent.

The claim of the McComb patent is as follows:

> "Forming a link or tie with an oblong aperture one end of which is arrow-shaped, or "rather presents two sides of an equilateral "triangle, the design of this arrow-shaped end "being not only to force the hoop or bend of "the hoop over the slot, which it does with unerring precision when the bale expands after "being released from the press, but also to secure an equal bearing upon the separated "parts of the slotted side of the tie."
>
> (*Record*, pp. 41–2.)

This patent is for a modification of the Cook and the Brodie inventions; and its peculiarity consists in the fact that, while the tie contains Cook's open slot, and Brodie's combination of open slot and single central aperture, this central opening is provided at one end with an incline which aids in adjusting and retaining the band over the slot through which it enters.

The ties manufactured by complainants under these three patents are popularly known as "*Arrow Ties*," being in all essential respects like the tie

shown and described in the McComb patent. They have also made, but in much smaller amounts, a modified Arrow tie, known as the "Arrow No. 4" (the former being "Arrow No. 2"); this No. 4 tie having a *side* slot leading into the central aperture of the buckle, and therefore embodying only the Cook and the Brodie inventions.

These ties as made by complainants have been put up in bundles of thirty each; each tie consists of a flat band eleven inches in length and a buckle, this length of band being found the most convenient for plantation use.

INFRINGEMENT.

One of the defendants, called as a witness, admits that for several years past, viz: since the year 1873, the defendants have been engaged in putting up and selling "pieced Arrow ties." These ties are made by them from old scrap-iron bought from the cotton mills, and paid for as junk. The pieces of band iron which they find among this scrap are straightened out by machinery; the pieces are then riveted together and trimmed to the proper length; Arrow buckles are attached; and the ties are then bundled and put on the market and sold.

(*Simmons*, Q. 14, p. 28; Q. 21-9, p. 29.)

Mr. McComb, one of the complainants, testifies to admissions made by defendants and to ocular inspection of their works, as follows (p. 16):

"Mr. S. W. Simmons called on me at my "house on the 22d February [1877]. This was "the first occasion of our meeting, and he de- "scribed the object of his visit to be a discussion "of the legal controversy pending between the "American Cotton-Tie Company, Limited, and "the firm known as the Providence Cotton-Tie "Company, of Providence, composed of him- "self and his two brothers, C. W. & W. W. "Simmons. Mr. Simmons at this interview "admitted that their firm had been engaged "for some years past in the manufacture of "the so-called second-hand Arrow cotton-ties. "Subsequently, on the 1st of March, by ap- "pointment, Messrs. S. W., C. W. & W. W. "Simmons called together at my house, on "which occasion we had quite a lengthened "interview, in all of which it was freely ad- "mitted by those gentlemen that they had been "engaged in the manufacture and sale of the "so-called second-hand Arrow cotton-ties; "that, in the incipiency of the business, it had "been conducted by one of them at Augusta, "Georgia, which led to their entering into the "manufacture at Providence, availing them- "selves of the labor at the State prison; that "they had always been able to sell these "pieced Arrow-ties at within about half a cent "of our price for new Arrow-ties.

"My next interview was with Mr. S. W. & "Mr. W. W. Simmons, at Providence, on "which occasion they took me through the "State prison and exhibited the work they "were then doing in this line. This was on the "15th March, present year.

"Q. 9. You saw this work going on?

"A. I found a full staff of men engaged in "straightening out the hoops, punching, rivet- "ing and bundling, and with each of the "bundles the Arrow-tie buckles were being at- "tached in the proportion of one buckle to "each band; these buckles were subsequently "dipped in varnish and were being hauled "away from the prison.

"Q. 10. Can you produce specimens of the "buckles which were being used by the de- "fendants at the time of your visit to their "works, as stated?

"A. I can, I have here three buckles that "are exact specimens of the buckles that were "attached to the bundles at the time.

The buckles thus produced by the witness are in evidence as Exhibit "Defendants' Arrow-tie Buckles."

The witness McComb, in answer to interrogatories 12–19 (pp. 17–18), explains the mode of combining the bands with these buckles as follows:

"Q. 12. Please examine the buckles marked "'Defendants' Arrow-tie Buckles,' and state "how the band would be manipulated in secur- "ing it around a bale of cotton by means of "such buckles.

"A. In the buckle known as No. 2, being "the one with the slot through the lower bar, "the hook can be made on one end of the hoop "into which the buckle would be inserted, and "on the band being passed round the bale, the "free end would be drawn taut and a loop "then formed on that end and inserted through "the opening on the lower bar of the buckle, "which completes the fastening. The mani- "pulation of the other No. 4 buckle, with the "opening at the side, is substantially the same, "except the last loop is passed through the "opening on the side to complete the fasten- "ing.

"Q. 13. In both forms of buckles, then, the "loop would be formed in the free end of the "band before that end is engaged with the "buckle?

"A. It would.

"Q. 14. And the function of the slot in these "three buckles is what?

"A. Is to admit the passing of a looped end "of the hoop in laterally.

"Q. 15. If it were not for the slot in the "frame of the buckle, how would that end of "the band have to be manipulated in engaging "it with the buckle?

A. "It would have to be passed in endwise "over the bar of the buckle.

"Q. 16. And what advantage, if any, is there "in the presence of the slot?

"A. The advantage is very great, in that it "gives much greater facility in making the fas- "tening when the bale is pressed.

"Q. 17. In the use of the buckles, how are the "ends of the band confined or held in place "after they have been engaged with the buckle "in the manner already indicated?

"A. By the expansive force of the bale on "its being released from the press.

"Q. 18. And how does that operate to accom- "plish this result?

"A. When the strain of the expanding bale "comes upon the bands, the looped ends being "inside, they are held firmly in the position "by the force exerted against the band and "buckle.

"Q. 19. How do the two buckles of the de- "fendants, where the slot is cut through the "lower bar, compare in construction and mode "of operation with the buckle shown and de- "scribed in the McComb patent, No. 31,252?

"A. The construction and mode of operation "are identically the same, with this difference, "that the strip shown in the drawings, from "which the buckles were made, is devoid of "the rib found on the defendants' buckle, and "the slot or opening cut through the lower bar "is somewhat greater than in the buckle shown "in the drawings of the patent."

It thus unmistakably appears that the use of these buckles by the defendants, in the manufacture and sale of their ties, involves the practice by them of the various inventions to which the patents in suit relate.

Thus, both forms of Arrow buckle, the No. 2 and the No. 4, involve the third claim of the Cook patent, since the opening or slot in the frame of the buckle permits the end of the band to be "slipped sidewise" underneath the bar under which it is to rest, instead of being passed through endwise.

Again, to quote the language of his Honor, Judge Blatchford, in the similar case of *Amer. Cotton-tie Supply Co.* v. *Bullard* (17 Blatchf., 160), "the "defendants participate in combining the open "slot, the link and the band, as in the third "claim of the Brodie patent, and in making the "combination set forth in the fourth claim of that "patent, and in practicing the method set forth in "the fifth claim of that patent, when they sell ties "bearing the features set forth in those claims and "capable of the use described in those claims, and "needing only the bale of cotton and the applica- "tion of the tie to it to make the combinations set "forth in those claims, and to produce the results "there set forth by the means there set forth."

Finally, defendants' use of the Arrow buckle No. 2 is a practice of the invention of the McComb patent, since it is the identical buckle therein shown and described.

It further appears, from the testimony of McComb, that defendants are not licensed under the patents in suit. (*McComb*, Q. 20, p. 18.)

Statement of Defence.

Complainants having presented a clear case of infringement, defendants, by way of discharging themselves, ask the court, first, to assume that the

buckles which they have used in their manufacture of pieced cotton-ties, and which they bought as old scrap-iron or junk, were formerly made and sold by complainants; secondly, they ask the court to hold that such buckles, thus made and sold by complainants, were sold without restriction upon the right to use; and, thirdly, that in converting old junk, by the use of rolls and punches and rivets and other mechanical appliances, into cotton-ties, they are simply exercising the legitimate and well-recognized right of repair.

To establish this defence, defendants must successfully maintain all three of these propositions. It is respectfully submitted that not one of them is established or tenable.

Point I.

Defendants offer no proof whatever that the material out of which they manufacture their ties, ever came, in any form, from the complainants.

The burden of proof in this regard is upon the defendants.

Chaffee v. *Boston Belting Co.*, 22 *How.*, 217.

Not only would it be incumbent on them to trace individual specimens of their stock to their original source, but they must satisfy the court that they

have not used any admixture, however small, of counterfeit or unlicensed ties. The testimony of McComb tends strongly to establish a belief in the existence of counterfeits in the market. (*McComb* Q. 79, p. 25; Qs. 87–89, p. 26). Doubtless there has been a large quantity of counterfeits made, for there has always existed a strong inducement for unscrupulous men to engage in such a manufacture; and there is no difficulty in making a counterfeit so like the genuine as not to be distinquishable from it.

The absence of any attempt on the part of defendants to trace individual specimens of the materials out of which they manufacture their stock to the hands of complainants, is to be accounted for only on the assumption of the utter impracticability of such an undertaking.

In lieu of this, defendants have contented themselves with pointing out general resemblances, in form and size and stamp, between their buckles and the known buckles of complainants, and upon such resemblances predicating a belief that all the buckles used by them came from the owners of the patents. This, however, falls far short of proof. The case is closely analagous to that of *Chaffee* vs. *Boston Belting Co., supra.*

In that case, at the trial, it was conceded and agreed, "that the defendants, before the date of "plaintiffs' writ, used certain machinery con- "structed in conformity with the specification an- "nexed to the letters patent declared on, and that "the defendants, in using the machinery, con-

"formed to the directions contained in the specifi-
"cation, and that the same was so used for the pre-
"paration and application of india-rubber to the
"manufacture of the articles mentioned and de-
"scribed in the indenture from Charles Goodyear
"to Henry Edwards, and that all the machinery so
"used was constructed and in use as aforesaid be-
"fore and at the time the original letters patent
"expired." By the indenture mentioned, Good-
year as owner of the invention had granted to Ed-
wards the exclusive right and license, under the
original term of the patent, to make, use and vend
the patented invention for the purposes specified
in the indenture. Upon the ground of this con-
cession, the presiding justice ruled and instructed
the jury that, "under their title, the defendants
"had the right to continue to use the same ma-
"chinery for the same purposes, and in con-
"formity with the directions contained in the spec-
"ification, after the expiration and renewal of the
"letters patent, and, consequently, that the
"plaintiff could not recover;" and, under this rul-
ing and instruction of the court, the jury returned
a verdict for the defendant. The plaintiff excepted
to the ruling, and upon that exception the case was
heard by the Supreme Court. The Supreme Court
held the ruling to be erroneous. The Court said:

> "In the absence of any explanation or sug-
> "gestion to the contrary, it must be inferred
> "that the use of the machinery so admitted
> "was without the license or consent of the
> "plaintiff, and subsequent to the period when
> "he became the owner of the patent
> "for the extended term; and, if so, the
> "admission was sufficient, under the plead-
> "ings, to make out a *prima facie* case
> "for the plaintiff. To maintain the issue
> "on their part, the defendants proved, in effect,
> "or it was admitted, that all the machinery so
> "used by them had been constructed, and was
> "in use, as aforesaid, before and at the time the
> "original letters patent expired, and that in
> "using the machinery they had conformed to

"the directions contained in the specification, "and that the same was so used for the pur- "poses and in the manufacture of the articles "specified and described in the before men- "tioned indenture. As before stated, they had "previously proved, or it had been admitted, "that the owner of the original term of the "patent granted the exclusive right and license "to a third party to use the invention for the "same purposes for which the defendants, "both under the original and the extended term "of the patent, had used their machinery; but "they did not prove, and there is no evidence "in the case to show, any privity between "themselves and that license, either by assign- "ment or in any other manner * * * *

"Their right to continue to use the machinery "as against the plaintiff is predicated, in the "instruction, upon the assumption that they "had a title to it, and were rightfully in the "use of it under that title, before and at the "time the original letters patent expired. "That assumed fact finds no support in the evi- "dence reported. It is clearly error for the "court, in its instruction to the jury, to as- "sume a material fact as proved, of which there "is no evidence in the case. *United States* v. "*Breitling*, 20 How., 255. And when the find- "ing of the jury accords with the theory of the "instruction, thus assumed without evidence, "the error is of a character to deserve correc- "tion."

In Chaffee's case the probability that defendants were rightfully using the machine sued was so great that the court below felt justified to instruct the jury to that effect; but the Supreme Court held that these instructions proceeded upon "*assumption*" *and not proof*.

So, in the case at bar, the fact that buckles having a close outward resemblance to those used and sold by defendants were formerly and still are made and sold by complainants, is not proof of

identity. It raises but the shadow of a presumption at best; especially when it is considered that defendants gather their material from many different sources remote from where complainants carry on their business, and when one also considers the probability, as set forth by McComb (Q. 79, p. 25; Q. 89, p. 26,) that counterfeit Arrow ties are largely in the market. Even this semblance of a presumption is weakened when it is considered, further, that complainants do not manufacture all their goods upon one exact type as regards proportions, forms of die, style of letter, &c.*

Manifestly with an existing lack of uniformity in the style of complainants' own goods, as made under the patents, the comparison of goods in the market can constitute no satisfactory test of identity.

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* McComb testifies (page 20):

"Q. 29. What uniformity has been observed by the company, or its "predecessors in business, as to the style of the stamp which you say "has been impressed on the buckles?

"A. There has been no attempt at uniformity, either in the style of "the letter, or in the shape.

"Q. 30. What have you to say as to the buckle itself in this regard— "as to its exact uniformity, and so on?

"A. There has been a general similarity, but no attempt at exact "uniformity in the particular form of strip of which they were made, "and there have been from time to time variations in the shape and "size of the opening."

Point II.

Even if it be conceded, for argument's sake, that the "scrap" out of which defendants have made their ties, was composed of the remnants of ties formerly made by complainants, the circumstances under which such ties were originally put upon the market were such that *defendants have no vendors with title from whom they can derive the right to use or sell the patented inventions.*

1. Complainants have never parted with an absolute and unqualified property in the Arrow ties which they have made.

Foreseeing years ago that if they were to sell their ties outright, the fragments of the ties when worn out might be gathered up and worked over into a second-hand article, and sold to the injury of the regular trade, complainants, as a means of guarding against such re-use, adopted the plan of conferring upon their customers only a limited or qualified property in the goods, to become exhausted as soon as the ties should have been once used, *i.e.* should have performed the duty of taking the cotton from the plantation or the press to the mill where it is worked up into fabrics.

The complainants regarded this as a complete protection against the anticipated evil, believing that, under the time-honored rule, *nemo in alium transferre potest plus juris quam ipse habet*, their

immediate customers could not convey to others a better title than they had received.

Among the evidences of this restricted license, which was of the essence of the original contract and which ran with the property, is the stamp impressed by the manufacturers upon the buckle portion of the ties, and the notices printed by them upon the bills of sale.

They have uniformly stamped on the buckles of their ties the words:

"*Licensed to use once only.*"

Also, from 1873 to 1875, both inclusive, complainants' bill-heads contained, in conspicuous type, the notice:

> "The cotton-ties included in this invoice are "licensed to be used once only as baling ties, "and are sold and purchased subject to this "restriction."

From 1875 down to the bringing of the suit the notice was as follows:

> "Each bundle of cotton ties charged in this "invoice consists of 30 BANDS. The BUCKLES "accompanying these bands are the property "of the AMERICAN COTTON TIE COMPANY, "LIMITED, and are licensed to be used for one "season only, the company reserving the right "after such use to recover possession of them "wherever found."

McComb, Q. 25–28, pp. 19–20.
Complainants' Exhibit, Bill-head A, p. 100.
" " " B, p. 100.

In addition to the notices thus printed on the bill-heads and stamped on the buckles, Mr. McComb testifies (Q. 58, p. 23) that the fact of the restriction placed by complainants upon their goods was

"generally advertised through the newspapers and "very generally notified through circulars."

Defendants cannot claim that they have not been affected with these notices. One of them, W. W. Simmons, admits that as early as January, 1876, (nearly a year before the filing of the bill), he had personal knowledge of the words "*Licensed to use once only*" stamped on the Arrow buckle. Presumptively, also, he and his co-partners, who had been handling the scrap of the mills from the year 1873, had had knowledge of this stamp during that entire period.

The transaction by which complainants dispose of their ties is a *bailment* and not a sale, and passes only the limited property agreed upon between the parties, as indicated by the stamp and the notices.

One of the essential conditions of a sale, in law, is that there exist a transfer of the ABSOLUTE OR GENERAL property in the chattel. The transfer of a special or qualified property only is not a sale.

Benjamin on Sales, 2d Amer. Ed., § 1.
Story on Sales, 4th Ed., § 1.
Hilliard on Sales, 22, *et seq.*

But there can be no transfer of an absolute or general property in an article—in other words, no sale, nor in fact can any contract arise between two parties, except upon the basis of MUTUALITY OF ASSENT, *both as to the subject matter of the transaction and as to the terms.* There must exist a *consensus ad idem.*

In the case at bar the complainants not only have never assented to the transfer of an absolute or general property in their ties, but have uniformly, intentionally and notoriously withheld such assent.

It is not pretended that any of complainants' customers have ever been deceived as to the nature of the transaction, so as to believe that they were securing a larger title in the goods than complainants claim to have conveyed.

2. It is unquestionable that complainants have the right, under their patents, to impose upon their goods any restrictions that they may choose to adopt not opposed to good morals or the public safety.

The Patent Law contemplates that the patentee shall have complete dominion over the invention during the full term of the grant, even to the extent of absolute prohibition upon its manufacture, use or sale; and, of course, any restriction less than this

is fully within his right and power. The greater includes the less.

Dorsey Co. v. *Bradley Co.*, 12 Blatch., 204.

Hawley v. *Mitchell*, 4 Fish., 388; 16 Wall., 544.

Chambers v. *Smith*, 5 Fish., 12.

Burks v. *Byam*, 2 Story, 525.

Wilson v. *Stolly*, 5 McLean, 1.

"*Sales may be made by the patentee with or "without conditions.*"

Mitchell v. *Hawley*, 16 Wall., 548.

In *Dorsey Co.* v. *Bradley Co.*, supra, Judge Woodruff held as follows:

> "*The right of the patentee to confer upon "others such qualified privilege, whether of "making, of selling to others, or of using, as "he sees fit, whether within specified limits "or under limitations of quantity, or number, "or restricted uses, does not seem deniable.*"

One of the most frequent well-known modes of managing property in a patented machine, is to "sell" the machine, as the transaction popularly is termed, but subject to imposed conditions as to extent of use—such conditions relating, differently, to time, place, to person, or to product.

3. It cannot be contended that the limitation which complainants have put upon their goods in regard to the right of use, is inoperative as being opposed to good morals or to the public safety, or

even to the public convenience, or as in any respect in fraud of the defendants or of any of their supposed vendors.

Upon the face of the papers, and in the absence of any proof to the contrary, it must be supposed that all the parties into or through whose hands complainants' ties have passed, have been satisfied with the restrictions imposed.

No complaint has been raised, either by the complainants' immediate customers, or by the factor, the country merchant, the planter, the press-owner, or the cotton-mill. Each has received, in his own estimation and in fact, in the chance for profit from handling the ties and in the use of the ties, full consideration for the price paid.

The limitation imposed has proved inconvenient only to those who, with full knowledge of the restriction [illegible] have sought to speculate upon a supposed flaw in complainants' title. In essence such purpose is dishonorable, and should receive no encouragement in a court of equity.

4. The restriction imposed by complainants upon their ties runs with the goods, so that defendants cannot have acquired a right in them superior to that possessed by complainants' immediate grantees.

Chambers v. *Smith*, 5 *Fish.*, 12.
Hawley v. *Mitchell*, 4 *Fish.*, 388.
Same case, 16 *Wall.*, 544.

In CHAMBERS *v.* SMITH, the defendant bought, at a judicial sale, a machine which appears to to have been offered without notice of any existing restriction upon its use. In fact, however, the ownership of the machine, prior to the marshal's sale, was qualified by an express restriction as to the place in which it was to be used. The purchaser, at the suit of the patentee, was enjoined from using the machine outside the limits for which it was originally licensed.

Judge McKennan said:

> "There is no principle of equity which re-
> "quires the owners of a patented invention to
> "give notice to a voluntary purchaser of a
> "licensee's right, to enable him to hold such
> "purchaser to the restricted use and enjoyment
> "of the invention stipulated in the license. It
> "is the duty of the purchaser to inform him-
> "self of the nature of the licensee's ownership,
> "and extent of his right. If he fails to do this,
> "he cannot complain that the patentee has mis-
> "led him, or set up his own remissness to
> "secure to himself a larger interest than was
> "granted to his predecessor in the ownership."

In HAWLEY *v.* MITCHELL, Bailey became the grantee of an exclusive territorial right under the original term of the patent; conditioned, however, that he should not grant any license to use the patented machines beyond the original term of the patent. Notwithstanding this restriction in his license, he "sold" four machines "with the right to run." The vendees, who do not appear to have known that the right of their vendor was restricted, were enjoined from using the machines under the extended term of the patent.

Judge Shepley said:

> "The purchasers were bound to examine the
> "title of their grantor. The most cursory ex-

> "amination of the nature of their interest would
> "have shown them that he had no right to do
> "more than license them to use the machines,
> "and that not beyond May 3, 1867 (the end of
> "the original term)."

The Supreme Court, in affirming the decision below, said:

> "Notice to the purchaser in such a case is
> "not required, as the law imposes the risk
> "upon the purchaser, as against the real owner,
> "whether the title of the seller is such that he
> "can make valid conveyance." * * *
>
> "No one in general can sell personal pro-
> "perty and convey a valid title to it unless he
> "is the owner or lawfully represents the owner.
> "*Nemo dat quod non habet.*" Persons, there-
> "fore, who buy goods from one not the owner,
> "and who does not lawfully represent the own-
> "er, however innocent they may be, obtain no
> "property whatever in the goods, as no one
> "can convey in such a case any better title
> "than he owns, unless the sale is made in
> "market overt, or under circumstances which
> "show that the seller lawfully represented the
> "owner."

If, as in these cases, the courts will enforce against an innocent purchaser for a valuable consideration and without notice, a restriction which ought to have been imposed by his vendor but was not, *a fortiori* must they enforce a restriction which the vendor affixes indelibly to all his goods, and against a purchaser who (as in the case at bar) has actual notice hereof.

The cases of Goodyear *v.* Beverly Rubber Co. (1 Cliff., 349), The Washing Machine Co. *v.* Earle (3 Wall., Jr., 320), and Adams *v.* Burke (1 Holmes,

40; 4 Fish., 392; and 17 Wall., 453), relied upon by defendants at the hearing below, are in no sense analogous to the case at bar.

In all three of these last-named cases the decisions proceeded upon the ground that there had been an *unconditional and duly authorized sale* of the material to which the respective patents related, thus conveying "*absolute dominion over the material as well as the manufactured article*," and "discharging it from the monopoly of the patent." The vendors, as licensees under the respective patents, were authorized to sell *without conditions*, and never sought to impose any. The owners of the patents did not make the patented article and dispose of it conditionally, but issued licenses to manufacture, which, though restricted in certain respects, as to territory and kind of goods, gave the licensees the right to *sell absolutely* all articles lawfully made under and within the limitations imposed by the license.

In GOODYEAR *v.* BEVERLY RUBBER CO. (1 Cliff., 349), the defendants made use of the vulcanized rubber of worn-out rubber shoes, in their manufacture of cloth. The shoes, however, had been made and *sold without restriction by persons duly authorized thereto*, under the Goodyear patent; and it was upon this theory, viz., that there had been a *valid unconditional sale* of the shoes, that the court refused to enjoin the defendants.

If, as in the case of Hawley *v.* Mitchell, *supra*, Goodyear had authorized his licensee to sell only *on conditions*, as *e. g.*, that the shoes should not be

converted into any other article, and if this condition had been stamped on every shoe put into the market, and had been printed on the bill-head of the manufacturer, and had become generally known to the wholesale dealers and the jobbers through whose hands the goods passed on their way to the consumer, the status of him who, with full knowledge of this qualified transfer, should have bought up the cast-off shoes and worked the material composing them into other articles, would unquestionably be that of an infringer.

The hypothesis presents a case precisely analogous to that at bar, and much stronger than the Brick-Machine case (Chambers *vs.* Smith, *supra*), or the Hat-Machine case (Hawley *vs.* Mitchell, *supra*).

In the WASHING MACHINE CO. *vs.* EARLE (3 Wall., Jr., 320), the facts were of a character analogous to those in Goodyear *vs.* Beverly Co.

In that case Goodyear had granted to the complainants the exclusive right to use his patented invention for vulcanizing rubber in its application to wringing machines, and to another company he had granted the exclusive right for making "hose, pipe and tube." The defendant had bought rubber hose, made and sold by the latter company, and cutting it into short pieces and drawing the pieces onto metal shafts had thereby made wringer rolls.

Mr. Justice Grier refused to enjoin such manufacture, basing his action upon the facts that, notwithstanding the manufacturers of the rubber tubing were restricted in their right to practice the Goodyear invention in the production of goods, *yet they had full right to sell their tubing without restriction, and that in fact it was so sold.*

IN ADAMS *vs.* BURKE (17 Wall., 453), the facts were as follows: The manufacturer of a patented coffin-lid owned the patent for the City of Boston and the surrounding territory included within a circle whose radius was ten miles. The defendant, who was an undertaker, bought the patented goods within this territory of persons duly authorized to sell them, but used the goods in his regular business outside this territory. Judge Shepley (1 Holmes, 40; 4 Fish., 392), states the issue involved as follows:

> "The only question presented in this case is: "Does the purchaser of a patented article, law- "fully manufactured *and sold without restric- "tion or condition* within his territory by the "territorial assignee of a patent right, convey "to the purchaser the right to use and sell the "articles in another territory for which anoth- "er person has taken an assignment under the "same patent."

Manifestly a question wholly different from that in the present suit—which is, whether, if the chattel be disposed of *with* conditions, those conditions follow it through its subsequent transfers.

It is to be noted, also, that in *Adams* vs. *Burke*, three of the justices of the Supreme Court dissented, holding that as the assignees of the designated district did not themselves obtain the right to make, use and sell outside the district, they could not confer upon others the right either to make or *to use*, or to sell outside the district, and therefore that the defendant was an infringer.

5. Even if there were no question of patents involved, it is difficult to see how, in view of the restrictions which complainants have placed on their ties, and of the methods which they have adopted to advise the public of their relations to their immediate grantees, defendants can have acquired any right such as they now assert.

No proposition of law is better established than the general rule, that in the absence of property or authority a sale of chattels confers no title, even when the vendor is in possession at the time of sale and the vendee purchases in good faith and for value. The title of third parties cannot be bettered by the fact of their coming into possession without knowledge of a restriction upon their assignee's title.

Chambers v. *Smith*, *supra*.
Hawley v. *Mitchell*, *supra*.
Ventress v. *Smith*, 10 Peters, 167.
McCombie v. *Davies*, 6 East., 587; 7 Ibid., 7.
Sawin v. *Guild*, 1 Gall., 485.

Otherwise stated, it is a fundamental principle that no man can be divested of his property without his consent or unless by operation of law, and that even the most honest purchaser without notice under a defective title cannot hold the property against the true proprietor. *Nemo in alium transferre potest plus juris quam ipse habet*, and *Nemo dat quod non habet*, are familiar maxims of the law.

To this general rule, which is enforced and has aid in the common law in the doctrine *caveat emptor*, there are certain well-established exceptions, as in the case of money, bank notes and negotiable instruments payable to bearer. So also, where the owner of the property has been induced by fraud or mistake to make a sale complete in itself, but voidable in law at his election, if the fraudulent vendee, while he holds possession and the legal title, sells to a third party who has neither knowledge of the fraud nor cause to suspect any defect in title, a good title as against the true owner will pass. Where, again, the true owner, with the intention of deceiving or defrauding third persons, has so deported himself in regard to his property, that thereby such person has been actually misled into the purchase of the property from the possessor without title, when but for the act of the true owner he would not have purchased, the vendee gets valid title.

It is submitted, however, that the rule admits of no exception that would embrace the case of the goods made by the present complainants, and thus enable complainants' immediate customers to convey to their vendees a better title than they themselves had acquired. See Hilliard on Sales, 44 *et seq.*; 1 Chitty on Contracts, 11 Ed., 535; Parsons on Contracts, 520.

In addition to the cases of *Hawley* v. *Mitchell*, and *Chambers* v. *Smith*, *supra*, we respectfully call the attention of the Court to the following cases, illustrating the manner in which the courts have dealt with the rule and its exceptions.

In VENTRESS *v.* SMITH, 10 Peters, 167, defendant's testator was a *bona fide* purchaser, for a valuable (and a fair) consideration, without notice, of four slaves; and yet the Supreme Court held that inasmuch as the assumed vendor, as administrator of the estate of which the slaves formed a part, was not judicially empowered to make such sale, as required by the laws of the State where the transaction took place, no title passed that would bind the property as against the party who had right.

In MCCOMBIE *v.* DAVIES (6 East., 537; 7 Ibid., 7), the suit was an action in trover for the recovery of five hogsheads of tobacco, deposited by plaintiff's broker in the King's warehouse, in his, the broker's, name, and subsequently pledged by the broker to defendant to secure a loan, defendant supposing the tobacco to belong to the broker.

Plaintiff having been non-suited, the King's Bench, on argument of motion to set aside the non-suit, held that defendant's acts in assuming dominion over the merchandise and taking it by the wrongful act of the broker was a conversion, and accordingly made the rule absolute for setting aside the non-suit. The court said:

> "A man is guilty of conversion who takes "any property by assignment from another "who has no authority to dispose of it, for what "is that but assisting the other to carry his "wrongful act into effect?"

On the new trial plaintiff obtained a verdict, and this the court refused to set aside.

Sallus v. *Everett*, 20 Wend., 267, is a leading case in New York.

The owner of lead shipped it from New Orleans to New York on a vessel of which one Collins was master; the vessel put into Norfolk in distress.

Collins sold part of the lead and shipped the balance on another vessel, took a bill of lading in his own name, sent the goods to his own consignees in New York, who sold to a *bona fide* purchaser, without notice of the history or ownership of the lead; the true owner sued the *bona fide* purchaser for the value of the goods and recovered their value.

In *Chapin* v. *Merle*, 11 Wend., 81, a warehouseman and the owners of a tow boat occupied the same building in Albany. By mistake the owners of the boat shipped 4 bbls. of potashes belonging to the owner of the warehouse, and conveyed the goods to New York, where the master of the boat discovered the error and delivered the property to a clerk of his employers, who said he would have the goods taken to the office of the inspector of that class of goods and advertised. The potash was inspected and a broker bought the goods for his principal in open market, without any knowledge of defective title, passed the goods over to his principal, and one year after was sued by the Albany owner for the value of the goods, and was compelled to pay.

In *McMahon* v. *Sloan*, 12 Penn. (2 Jones), 229, a father lent his son a horse. The son resided on a farm near the father, where he took the horse, and treated it as his own, called it his horse, and attempted to sell or trade it on several occasions. The father on several occasions had spoken of the horse as belonging to his son, and on one occasion denied that he owned the horse. The son sold the horse; the father brought trover; the defence was "*estoppel by conduct.*" The court held that to make the son's sale good it must appear *that the defendant was induced to treat with the son as the owner of the horse by reason of the statements and acts of the father;* that in dealing with exceptions to the general rule of title and property the burden was on the purchaser to bring himself clearly with-

in the exception. The father recovered the value of the horse.

In *Couse* v. *Tregent*, 11 Mich., 65, Couse delivered to one Hamilton a piano, under an agreement that the title should remain in Couse until the agreed price of the instrument should be paid in installments. Hamilton sold to a *bona fide* purchaser before he had paid the price agreed upon. Couse sued the purchaser for the piano and recovered.

In *Moore* v. *Holland*, 39 Maine, 307, Shepley, C. J., the owner of hay made a contract with the tenant of a farm that the tenant should feed the hay to his stock, the property in the hay to remain in the owner ; and the manure made was also to belong to the owner of the hay. The tenant used the hay and sold the manure to his landlord, who had no notice of the contract. The court held that the manure belonged to the owner of the hay, and that the tenant passed no title by his attempt to sell the manure.

In *Bellew* v. *Suddreth*, 10 Ired. (Law), 176, A purchased from B a sorrel mare. A gave B his promissory note for the price ; at the bottom of the note was appended the following memorandum : "*It is agreed and understood that a sorrel mare, "for which the above note is given, is to remain "the property of B until the above note is fully "paid.*" Before the note was paid A sold the horse to a third person, with no notice of the condition. B sued for the horse and recovered.

In *Parsons* v. *Webb*, 8 Greenl., 38, the plaintiff delivered a horse to A to be sold for the plaintiff's benefit. A sold to B in payment of a debt due from A to B, and B sold to the defendant. It was held that the plaintiff still retained the title to his horse, and could maintain replevin against the vendee of B.

It may be noted, in passing, that the question of the legal effect upon a contract of a general notice, such as complainants *ex industria* have given to the public in the matter of the restriction which they have undertaken to place upon their ties, is widely different when the transaction is between private persons from what it usually is in the case of a *common carrier*.

There are special reasons arising out of the imperative demands of public policy, why the courts will not, as a general rule, permit *common carriers* to divest themselves of their common law liabilities otherwise than by an express contract. These are fully stated in the leading cases of *Railroad Co.* vs. *Manufacturing Co.*, 16 Wall., 318, and *Express Co.* v. *Caldwell*, 21 Wall., 264.

Yet, even with common carriers, the rule is not rigidly enforced where the conditions imposed by the "notice" are not unreasonable.

Orange County Bank v. *Brown*, 9 Wend., 85, 115.

Hopkins v. *Westcott*, 6 Blatch., 64.

Stewart v. *London & N. W. R. R. Co.*, 3 Hurlstone and Cottman, 135.

2 *Greenleaf on Evidence*, 10th ed., § 215.

In ORANGE CO. BANK *vs.* BROWN, Judge Nelson said:

> "If he [common carrier] has given general "notice that he will not be liable over a certain "amount, unless the value is made known to "him at the time of delivery and a premium "for insurance paid, such notice, if brought "home to the knowledge of the owner (and "*courts and juries are liberal in inferring* "*such knowledge from the publication of the* "*notice*), is as effectual in qualifying the acceptance of the goods as a special agreement."

In STEWART *v.* LONDON AND N. W. R. R. Co. (3 H. & C., 135), plaintiff bought an excursion ticket printed "subject to the conditions in the company's time and excursion bills"—these bills advertising, *inter alia*, "luggage under sixty pounds *free, at passenger's own risk.*" It was held that he could not recover for loss of luggage within the prescribed weight, and even though he was in fact ignorant of the condition. He had the *means* of information, and thus remained uninformed at his peril.

GREENLEAF says (10th ed., Vol. 2, § 215); "It is "now well settled that a common carrier *may qual-* "*ify his liability* by a *general notice* to all who "may employ him of *any reasonable requisition* "to be observed on their part."

If a common carrier can thus qualify his liability by "general notice of reasonable requisitions," *a fortiori* it would seem that private individuals may by this method qualify contracts with each other. In the present case, it cannot be contended that the restriction imposed by complainants, by the general notice stamped on their buckles and printed on their bill heads, are otherwise than reasonable. It is not pretended that any person has ever been embarrassed as to legitimate business operations by reason thereof, or that it has in any way operated to the public inconvenience or detriment.

6. The ground upon which the learned Judge who heard the case below appears to have based his decision, is that the complainants are *estopped by their own conduct* from asserting the present claim, having in the first transfer of the goods waived the right to affix restrictions upon their use or sale, or, in other words, having impliedly impressed upon the goods an unrestricted license.

It is respectfully submitted that no such estoppel or waiver of right exists.

Judge Shepley, in his opinion, after stating facts that show that complainants parted with their property *not in full title but only as a bailment*, admits, upon the authority of *Hawley* v. *Mitchell*, *supra*, that "the company clearly had the right "in selling a patented article to put a restriction on "its use or sale, and to convey only a restricted "title, or to license only a restricted use; and the "purchaser under such a restricted title could not "convey a greater or better title than he himself "had."

It must be assumed that this sound proposition of law was intended by his Honor to be applied to the class of goods which the complainant company was engaged in manufacturing and selling, but the opinion of the court would have been far more satisfactory had it proceeded to specify what means more effectual than those actually adopted the owners of the patents could have devised for

the purpose of effectuating the desired restriction upon the use of their ties. Unless such restriction follows legally from the means actually adopted, it is believed to be wholly incapable of accomplishment. And this apparently was the conclusion, contradictory of the proposition above quoted, to which the Judge seems by the following paragraph of his opinion to have come. He says:

> "But when the proprietors of a patented article sell it for the purpose of allowing it to be "used in the ordinary pursuits of life and to "pass into the market of the country as an ordinary article of commerce and subject to unrestricted purchase and sale, he waives his right "to affix conditions or restrictions to its use or "sale, and consents that after one sale and the "payment of one royalty it shall pass out of the "limits of the monopoly. * * * *
>
> "The vendor of the patented buckles "sells them to be applied to the bales "of cotton with the full knowledge that "they will be sold and re-sold as often "as the cotton is sold. They impliedly consent to these unrestricted sales. They cannot under such circumstances be fairly considered as retaining the title to the buckles in "themselves, or as parting only with such a restricted title as would require each vendor of "the cotton to sell it accompanied with a restriction on the title and use of the buckles. The "very purpose of the original sale, with the "knowledge of the subsequent use and sales "necessarily incident, imply a parting with the "unrestricted title and a passing out of the limits "of the monopoly of the thing sold as much as "it would if the vendor sold patented thread, "nails, or screws to be used in fastening packing-cases to be sold with the goods packed.
>
> "The facts in this case show that the owners "of the patented buckle intended and contemplated that the purchasers should sell an unrestricted title inconsistent with any reservation "of title or use in the original vendors."

The errors in this reasoning are manifold.

(*a.*) It was error in the court to assume that because in this country cotton is sold "without tare," the *ties and bagging* are sold with each transfer of the cotton.

This assumption is not supported by a scintilla of evidence. In fact, the ties and bagging around the cotton are precisely like the paper and twine which the grocer gives his customer as a wrapper to the coffee or sugar that he buys; and as, in the former case, in this country, the weight of the wrapper is included in the gross weight charged for, so in the latter the grocer weighs the paper and twine with the sugar or the coffee, and charges so much per pound for the gross weight. That, however, does not change the nature of the transaction. In the one case it is a transaction in *sugar* or in *coffee* (the wrapper being a mere *incident* of the transaction, and not the *subject* of it), and in the other it is a transaction in *cotton* (the wrapper, bagging and ties, in this case also, being a mere *incident* of the transaction, and not the *subject* of it).

It is irrational to say that a buyer of cotton in this country buys in connection with each bale of cotton from twenty to thirty pounds of iron and bagging and pays therefor the same price that he pays for the cotton itself, when he knows that the moment it reaches England he will be unable to sell such ties and bagging, but will be obliged to give them away in order to secure a purchaser for the cotton. In fact, the price of cotton in England, which absorbs four-fifths of the whole production of the world, regulates the price the world over; and whenever the course of trade, as now in the

United States, is to make counting-house computation upon the gross weight of the bale, it follows, as a matter of course, that the price per pound is correspondingly reduced. This is a mere matter of convenience; it would be almost impossible, without great expense and inconvenience, to strip a bale in this country, so far from its destination, in order to ascertain the net weight of fibre; and it is surpassing belief, that any man buying cotton under this course of trade should for a moment suppose that he is also buying, at the price of cotton what he knows he cannot afterwards sell except at the price of old iron scrap.

(*b*) But, even admitting for the sake of the argument, that the makers of the patented ties consent, by implication, to the *sale* of the ties with the cotton on which they are used, it is wholly illogical to assume that thereby they intend to consent, or do, in fact or in law, consent to a sale of such ties after the cotton has reached its final destination, and the ties in the usual course of manipulation have been removed from the bales and thereby converted into scrap. Up to that point, beyond question, the original makers of the ties intend that they shall pass from hand to hand with the cotton—and whether by the process of sale or by what the law knows as bailment, is to them a matter of no concern; but it is also beyond question that they do *not* intend to confer upon the possessors of this scrap the right, either themselves or by their vendees, to convert it into bale-ties, to be put upon the market in competition with the new goods of the patentees. The original transfer of the ties necessarily implies the right to use

them for the purpose for which avowedly they are sent into the market, *i. e.*, until they shall have taken the cotton from the point of production or shipment to the point of consumption. It would be absurd to hold, in the face of the manufacturers' constant and explicit declarations to the contrary, that it implies the right to use them for a totally different purpose, and one directly calculated to limit and destroy the manufacture under the patents.

(*c.*) It is incomprehensible how, under the facts and admissions in the case, the pretense of estoppel by conduct should be set up or receive any consideration. The law of estoppel is well settled. To defeat complainants' right to control their ties after they have been used once, or for one season, it must be made to appear:

(1.) That *quoad* the defendants, complainants have been guilty of representing some *material fact as true* which was in fact false, or of concealing *a material fact or facts* from defendants.

(2.) The representation or concealment must have been by *the complainants*, with a full knowledge of the actual facts, *to the defendants, ignorant of the real facts.*

(3.) The representation or concealment must have been made with the intention that the defendants would act on the representation, or be influenced by the concealment.

(4.) The defendants must *have been induced to act by and upon the representations or concealment.* They must show that otherwise they would not have been set in motion.

Bigelow on Estoppel, 427, *et seq.*

Applying this test it will be found that we have made no representation to the defendants, or to the junk-dealers, or the mill-owners, upon which defendants have acted. We have been guilty of no concealment. We have no desire that the defendants shall deal in our property. On the contrary, we have at all times protested against it as dishonorable and dishonest. We have not stood by silent. We have stamped our claim to the ownership of the property in the very iron of the buckles. The defendants have known of this, and yet have deliberately elected, in spite of it all, to pursue their dishonest trade, in the hope that legal acumen would find some flaw in complainants' title, whereby defendants might escape the just consequences of their conduct.

7. The learned Judge seems unfortunate in the parallel which he draws, and upon which seemingly he relies, between bale-ties and pins, nails and screws. If it should be conceded, as Judge Shepley seems to hold, that a purchaser of "pins, nails "and screws * * * * is not bound to "trace the title to see if it be restricted," yet the reason which he assigns therefor, viz: that the purchaser "may well suppose that no one would "expect to affix a restriction on the use of such ar-

"ticles which would be operative, or, if he could "do so, would ever find purchasers for them," has no applicability to the goods involved in the case at bar. It cannot correctly be asserted of cotton-ties either that complainants did not expect the restriction to be operative, or that the affixing of the restriction, if operative, would put an embargo upon purchases. There is no ground to suppose that a prohibition operating to prevent junk-dealers from converting the scrap of the mills into merchantable ties will deter either the factor or the merchant, or the planter, from providing himself with a supply of new ties from legitimate sources. It has not so operated in the past; it is inconceivable that it should ever so operate.

8. Judge Shepley seems to have been equally infelicitous in his argument drawn from a supposed public convenience. He says:

> "When pins, nails, screws or buckles are "sold, if some of them are sold with a re- "stricted and some with an unrestricted title, "there are no means of identification which en- "able the purchaser, after they have passed "into the market and common use, to distin- "guish the articles licensed or restricted in their "use from those absolutely sold. * * * "The public should not be vexed with litiga- "tion about reserved rights or conditions af- "fixed to the title of such articles, or put upon "the investigation of encumbrances or restric- "tions on the title of nails, screws, buckles, or

"pins, before they can be safely used by a per-
"son who has bought them of parties who ob-
"tained them of the patentee with the right to
"sell them in the open market."

This certainly was a novel position for the court to assume, in the very face of the fact that complainants *had* provided the public with a reliable "means of identification", which would enable a purchaser to distinguish the cotton-ties "li-"censed, or restricted in their use, from those abso-"lutely sold." They had stamped upon their buckles, the use of which they proposed to restrict, the words "*Licensed to use once only*," and thereby had relieved the public from the necessity of any "investigation of incumbrances and restrictions "upon the title" other than what was patent on the very face of the goods.

9. It was error on the part of the court below to hold that complainants may fairly be presumed to have received their royalty when they originally parted with the possession of their ties.

Per contra, it must be presumed that complainants' tariff of prices has been regulated by the extent of the right which they intended to convey; and, therefore, that they have not received that compensation for the patented inventions which corresponds to their full value, or, in other words, that price which they might have obtained from the public upon an *un-*

conditional sale of the ties. To be confronted, under judicial sanction, with the competition of ties manufactured from raw materials bought at the price of old scrap, and free from the payment of royalty, would be ruinous to complainants' rights as secured by the patents.

10. Not the least interesting portion of the opinion of the court below is the concluding paragraph, which announces this proposition: "It "is more for the interest of inventors that they "should obtain their royalty on such articles (nails, "screws, buckles and pins), when they first put "them upon the market than to make the mon- "opoly odious by the attempt to fix restrictions on "their subsequent use."

So far as this proposition essays a lesson in political economy, it is foreign to the functions of the court, and also is believed to be unsound. It certainly finds no warrant in the evidence contained in the record.

So far, again, as the proposition, in its application to the case of the complainants, implies a finding of facts, viz.: that "the attempt to fix restrictions" on the use of the ties has made "the monopoly odious," it is based upon pure assumption. The restriction imposed is in its nature a most reasonable one, and is not calculated to make the monopoly odious; nor has it in fact had this

effect. It works no injury to the *factor* or *the merchant*, who make their ordinary profit in handling the goods; it works no injury to *the planter*, who never receives less for his cotton because of a condition attached to the tie, prohibiting its re-use after it has performed its designated work of carrying the cotton from the field to the mill; it works no injury to the *mill-owner*, since it becomes "scrap" in his hands, and he disposes of it for the price that scrap commands; and *defendants* cannot complain, for they are simply attempting to speculate upon a pretended defect in complainants' title, and of course, having entered intelligently and deliberately upon a career of infringement, have taken upon them all the risks involved in their new business.

Under such circumstances, it is submitted, the chosen epithet of the Judge is a thousand-fold less pertinent to the mode of business adopted by complainants than to the cunning practices of defendants, who have turned aside from the legitimate work of junk-dealers, the buying and selling of old scrap, in which they were engaged prior to 1873, (*Simmons*, Q. 21–4, p. 29), and have undertaken, by converting the scrap which they buy into ties, to deprive complainants of the full enjoyment of the legitimate fruits of the simple but really great inventions which in a few years have revolutionized the art of baling cotton, and effected an unquestioned economy to the country of at least thirty millions of dollars.

Point III.

Defendants cannot justify their action on the ground that, using buckles formerly made by complainants, they are simply exercising on the old ties the established right of REPAIR.

(*a.*) Conceding the premise, for the sake of the argument, defendants' work is essentially a MANUFACTURE of ties, and not of the nature of legitimate REPAIR. The act of *repairing* a machine, with view of *maintaining* it in *the working condition contemplated by the patentee*, is vitally different from *reconstructing* a machine *which has reached that term of its life that was specially designed by its vender.*

This distinction is emphasized in *Wilson* v. *Simpson*, 9 How., 109. In that case the court had refused to enjoin the vendee of a planing machine, who was charged with infringement in that he had put in new cutters in lieu of the old ones worn out; but the decision of the Supreme Court, sustaining the lower court, proceeds entirely upon the theory that this was a "*replacement of temporary parts*," *for the purpose of preserving the machine, in strict accord with the intention of the patentee and vendor, this right of replacement of such temporary parts being in the case of such an article a necessary concomitant "without which the invention "would have been of but little use to the inven-"tor or to others.*"

Manifestly, the reasoning of the Supreme Court is intended to apply to the case of *individual* machines, as to which the court decided that the owners

of them have the right to *maintain them by repairs in the working condition contemplated by the patentee and vendor*; but the policy that should control in such a case is totally diverse to that which should control in the case of persons who make a business of buying up the discarded remnants of patented machines, *in direct opposition to the intention of the patentee and vendor*, and manufacturing the same into a merchantable commodity, and entering the market as competing venders.

In the present case the ties, while passing through the hands of the cotton-mills, lose their character as "*ties*," and assume the form of "*scrap*" or "*junk*." *

As indicated by the testimony, the destruction of the ties arises, in large measure at least, from the "cutting" of them, effected by some suitable cutting instrument, such as heavy shears or an axe, in order to open the bale and release its contents. This shortens the band so that it is no longer serviceable for its original duty as part of a cotton-tie. The purchase of the resulting "scrap," and the employment of special machinery to work it up into "ties," is a business which is essentially different, both in

* Simmons' testimony on the point is explicit. On page 28, he says:

"13 Q. In what shape or condition are the straps and buckles when "they are furnished to you from the cotton-mills?

"A. In the shape of scrap; the hoops are cut, bent and put together "in rude bundles for convenience in handling. The buckles generally "come on the hoops and on the short pieces of scrap. We bring the "long and short pieces together, and the buckles are attached to the "long piece or the short piece, according as the band happened to be "cut when the bale was opened.

"14 Q. State fully what you do with this material so purchased from "the mills?

"A. We open the buadles and straighten the hoops by hand as well "as we can, then roll the hoops—cold roll—punch them, rivet them, "cut them to proper length, bundle them. In bundling, we attach the "buckles that come with the hoops, one buckle for each hoop. We "then paint them."

intent and in effect upon the interests of the patentees, from the case of the accidental breaking of a band, which, as a matter of course, a planter might repair.

The fact that the market price of this "scrap" has ranged from one and a fourth to one and a half cents per pound (Simmons, Q. 28-9, p. 29), during the years when complainants' ties were selling at from six to nine cents per pound (McComb, Q. 75, p. 25), and that defendants' so-called second-hand ties, made from this same scrap or old junk have sold at prices within one-half cent per pound of the ruling market prices of complainants' goods (McComb, Q. 8, p. 16), is of itself conclusive that this scrap has constituted the raw material of defendants' business. A business in which the value of the finished goods is determined by the cost of the raw material and the labor put upon it in the proportion of one to four or six, must rank as *a manufacture*.

(*b.*) Independently of the fact that defendants manufacture the band portion of their ties out of old junk, the simple act of combining buckles with bands of iron of a specific length to form cotton-ties, as practised by defendants, constitutes a direct infringement of the third, fourth and fifth claims of the Brodie Reissue.

The *third* claim is for a *combination* of two elements—a metallic band, and a link (or buckle) having a single central opening and an "open slot" (or opening through the frame) for introducing the band sidewise.

The novelty of these two elements, separately considered, is not a matter at this point necessary to be discussed; the novelty of the *combination* is not called in question. But defendants, who are not licensees under the patent, nor agents of complainants, and therefore have no right to manufacture ties embodying any of the patented features, or to sell such ties made by others, make *the combination* recited in the third claim, and thus practice the invention, whenever they bundle up a number of bands with a corresponding number of Arrow buckles, in proper condition for use by the buyer. The "open slot" of the Arrow buckle permits the band to be "introduced sidewise" into the central opening which receives both ends of the band.

This claim of the Brodie patent is not limited by any special location of the "open slot." In this respect the requirement is, simply, that there be a cut through some part of the frame "for introducing the band sidewise" instead of threading it through endwise.

The *fourth* claim, also, is for a *combination* of two elements—one a metallic band and the other an "open slotted" link or buckle so constructed that when used the ends of the band may be turned under the link and held by the expansive force of the cotton, clamping them against the cross-bars of the buckle. The claim differs from the *third* in that the buckle part of the combination is not limited to a *single* opening. The fourth claim would include a construction in which one end of the band passes into one opening in the buckle and the other into a second opening; the two claims have in common the elements of a metallic band and a link which

has a cut through the frame ["open slotted"] "for introducing the band [one end of it] sidewise."

Manifestly, defendants' ties present such a combination.

The *fifth* claim, in terms, is for a "method of baling cotton with metallic bands," which is simply for the use of the tie which forms the subject of the third claim. While defendants do not themselves apply the ties which they make to bales of cotton, it is beyond question that they contribute to such use of the ties, and, under the doctrine of *Wallace* v. *Holmes*, 9 Blatch., 65, must be held to infringe the fifth claim, as well as the third and fourth.

In *Amer. Cotton-Tie Co.* v. *Bullard* (17 Blatchf., 160), it was expressly held by his Honor, Judge Blatchford, under a similar state of facts, that the defendants were guilty of practicing the inventions set forth in these same claims, the third, fourth and fifth, of the Brodie patent.

Conclusion.

Complainants respectfully submit:

1. That defendants' ties embody the inventions patented by the third claim of the Cook patent, the third, fourth and fifth claims of the Brodie patent, and the claim of the McComb patent; that defendants have no direct license from the patentees or their assignees; and that they have failed in their proofs to establish any connection between their own ties and those made by complainants upon

which to ground the conclusion that the former, or even parts of them, are identical with or are produced from the latter.

2. If it were proved that defendants use in the production of their ties fragments of ties previously manufactured by complainants, this would be no defence, since in no proper sense can it be said that defendants are engaged in repairing ties; they have organized a regular business as *manufacturers* of ties. They use as raw material for this manufacture an article of merchandise bought and sold under the trade name of "scrap" or "junk," and this raw material they transform, by the use of machinery and by organized labor, into a wholly different article of merchandise, its value being approximately quadrupled by the manipulations to which it is subjected in their lands.

3. Even if it could be held in law that the conversion of old junk into cotton ties, by the various manipulations involved in defendants' manufacture, is analogous to the exercise of the right of repair which the purchaser of a patented machine for use ordinarily has as to that machine, defendants could not make this an available ground for defence; for, first, if the junk which they use is not composed of the remnants of ties emanating from complainants, defendants are bald infringers of the patents, without even the color of right; and, secondly, if this scrap is composed of the debris of ties made by complainants under the patents in suit, the limited right of user which attached to the ties from the very first is a bar to the second use of them in any form.

On the authority of *Hawley* v. *Mitchell*, *Chambers* v. *Smith*, *Dorsey Co.* v. *Bradley Co.*, it was entirely competent for complainants to put upon their goods a restriction as to the extent of use.

Such restriction would run with the goods even as against a purchaser without notice; *a fortiori*, it would bind a purchaser with notice. Defendants had both constructive and actual knowledge of the restriction.

It is submitted that when one is possessed of that absolute and peculiar dominion over property which a patent confers (whereby he can not only impose upon a specific article which he himself manufactures and transfers to another any restriction, whether as to time or place, or extent or nature of use, that he may choose—*Dorsey Co.* v. *Bradley Co.*, 12 Blatchf., 204—but can absolutely prohibit any and all use of similar articles obtained from any other source), and when in any instance he has disposed of the patented article under limitations that are in accordance with good morals, and not opposed to public safety, and free from fraudulent intent and fraudulent result, such person can not be held by operation of law to have parted with a larger interest in the property than was contemplated by, or formed a part of, the original contract, because forsooth some stranger to him, a remote transferee, may have assumed to exercise over it a dominion which his vendor did not possess and therefore could not convey.

4. Independently of the patented character of complainants' goods or of any rights conferred by the patents, it is submitted that the original transaction between complainants and their immediate

customers was not a sale but a bailment, being a transfer of the property, or at least of certain portions of it which defendants use in their manufacture, for a limited time and a specific purpose; that the bailment being in no sense opposed to good morals, to the public safety, or to public policy, or even the public convenience, nor in fraud of defendants or of any of their vendors, is both legitimate and reasonable; that the restriction under which complainants have parted with their goods, being lawful, runs with the goods themselves, subject to the general rule of *caveat emptor*; that, while a bailment may, under some circumstances, *at the election of the bailor*, be converted into an absolute sale, the facts in the present case not only furnish no ground for any presumption that complainants have surrendered their reserved rights in the premises, but are wholly opposed thereto, as also to any presumption that complainants are estopped, by any acquiescence or waiver, from following their property and enforcing their rights, if they find that any one, having qualified possession of the property for a specific purpose only, has assumed to exercise absolute dominion over it, or even to use it at all after the right originally given has expired; and that by consequence defendants, who are not even innocent purchasers without notice, but who act with full actual knowledge of complainants' rights and with the avowed spirit of trespassers, and who have acquired possession of the goods after the right of user as originally conferred has been exhausted, have no vendors with title, and are without the right of further use of the patent inventions whether for the purpose of manufacture or of sale or otherwise.

5. It follows that defendants are bald and naked infringers of complainants' rights. The decree of the court below, dismissing the bill, should be reversed.

Saml. A. Duncan